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# Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## POSTAL SERVICE

### 39 CFR Part 20

#### International Mail Manual; Incorporation by Reference

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service announces the issuance of Issue 35 of the International Mail Manual (IMM), and its incorporation by reference in the Code of Federal Regulations.

**DATES:** *Effective Date:* This final rule is effective on February 25, 2009. The incorporation by reference of Issue 35 of the IMM is approved by the Director of the Federal Register as of February 25, 2009.

**FOR FURTHER INFORMATION CONTACT:** Christy Bonning, (202) 268-2108.

**SUPPLEMENTARY INFORMATION:** Issue 35 of the International Mail Manual was issued on May 12, 2008. It replaced all previous editions. Issue 35 of the IMM continues to serve the objectives of the Postal Service's Transformation Plans, the 2004-2008 Five-Year Strategic Plan, the Strategic Transformation Plan 2006-2010, and Vision 2013, Plan for 2009-2013 to enable the Postal Service to fulfill its long-standing mission of providing affordable, universal mail service. The Plans' key strategies include improving operational efficiency, supporting growth through added value to customers, and enhancing the Postal Service's performance-based culture.

In addition, Issue 35 sets forth specific changes such as new mailing standards and pricing for shape-based First-Class Mail International Service: Postcards, Letters, Large Envelopes (Flats), and Packages (Small Packets), expanded country price groups for First Class Mail International service to nine price groups to align with Express Mail International and Priority Mail

International services, commercial base pricing and commercial volume pricing for Express Mail International and Priority Mail International Services. Issue 35 also corrects various printing and format errors and omissions in the previous Issue.

The International Mail Manual is available to the public on a subscription basis only from: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. The subscription price for one issue is currently \$42 to addresses in the United States, and \$58.80 to all foreign addresses. The IMM is also published and available to all users on the Internet at <http://pe.usps.gov>.

#### List of Subjects in 39 CFR Part 20

Foreign relations; Incorporation by reference.

■ In view of the considerations discussed above, the Postal Service hereby amends 39 CFR Part 20 as follows:

#### PART 20—INTERNATIONAL POSTAL SERVICE

■ 1. The authority citation for part 20 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3622, 3632, and 3633.

■ 2. Section 20.1 is revised to read as follows:

##### § 20.1 International Mail Manual; incorporation by reference.

(a) Section 552(a) of Title 5, U.S.C., relating to the public information requirements of the Administrative Procedure Act, provides in pertinent part that matter reasonably available to the class of persons affected thereby is deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register. In conformity with that provision, with 39 U.S.C. section 410(b)(1), and as provided in this part, the U.S. Postal Service hereby incorporates by reference its International Mail Manual (IMM), Issue 35, dated May 12, 2008. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(b) The current Issue of the IMM is incorporated by reference in paragraph (a) of this section. Successive Issues of

the IMM are listed in the following table:

International mail manual	Date of issuance
Issue 1 .....	November 13, 1981.
Issue 2 .....	March 1, 1983.
Issue 3 .....	July 4, 1985.
Issue 4 .....	September 18, 1986.
Issue 5 .....	April 21, 1988.
Issue 6 .....	October 5, 1988.
Issue 7 .....	July 20, 1989.
Issue 8 .....	June 28, 1990.
Issue 9 .....	February 3, 1991.
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Issue 29 .....	July 1, 2003.
Issue 30 .....	August 1, 2004.
Issue 31 .....	May 31, 2005.
Issue 35 .....	May 12, 2008.

■ 3. Section 20.2 is revised to read as follows:

##### § 20.2 Effective date of the International Mail Manual.

The provisions of the International Mail Manual Issue 35, effective May 12, 2008 are applicable with respect to the international mail services of the Postal Service.

**Neva R. Watson,**

*Attorney, Legislative.*

[FR Doc. E9-3961 Filed 2-24-09; 8:45 am]

**BILLING CODE 7710-12-P**

## POSTAL SERVICE

### 39 CFR Part 20

#### International Product and Price Changes

**AGENCY:** Postal Service.™

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is revising *Mailing Standards of the United States*

*Postal Service*, International Mail Manual (IMM®), to reflect changes to the prices and product features for the following Shipping Services: *Global Express Guaranteed® (GXG®)*; *Express Mail International®*; *Priority Mail International®*; *Direct Sacks of Printed Matter to One Addressee (Airmail M-bags)*. We are implementing this international price change concurrent with our domestic shipping services price change. The total international price increase is approximately 8.5 percent.

**DATES:** *Effective Date:* January 18, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Obataiye B. Akinwale at 703-292-5260, Janet Mitchell at 202-268-7522, or, Larry Richardson at 202-268-5315.

**SUPPLEMENTARY INFORMATION:** On November 12, 2008, the Governors of the Postal Service established new prices and product features for Shipping Services. This **Federal Register** final rule describes the international price and product changes and the mailing standards needed to implement them.

The number of country price groups for Express Mail International and Priority Mail International is expanded from 9 price groups to 10 price groups. The new country price group 10 is established for items sent to Australia and New Zealand.

Priority Mail International service is expanded by adding a new small flat-rate box. The small flat-rate box follows the mailing standards for the Priority Mail International flat-rate envelope, not the Priority Mail International regular or large flat-rate box.

Commercial base pricing for Global Express Guaranteed (GXG), Express Mail International, and Priority Mail International is expanded to include qualifying end-user customers that pay postage using Information-Based Indicia (IBI) postage meters and transmit customs forms electronically. IBI is a digitally-generated indicia that includes a two-dimensional barcode.

**Global Express Guaranteed**

Global Express Guaranteed (GXG) service is an international expedited delivery service provided through an alliance with FedEx Express. GXG provides reliable, high-speed, date-certain service with a money-back guarantee to over 190 countries.

The price increase for retail GXG averages approximately 11.2 percent. The commercial base price for customers who prepare and pay for shipments online at *usps.com* or by using an authorized PC Postage vendor will remain 10 percent below the retail price. Availability of commercial base

pricing is expanded to include qualifying end-user customers that pay postage using IBI postage meters and transmit customs forms electronically.

**Express Mail International**

Express Mail International provides reliable, high-speed service to over 190 countries with a money-back, date-certain delivery guarantee to select destinations.

The price increase for retail Express Mail International averages approximately 8.5 percent. The commercial base price for customers that prepare and pay for shipments online at *usps.com* or by using an authorized PC Postage vendor will remain 8 percent below the retail price. The commercial base price is expanded to include qualifying end-user customers that pay postage using IBI postage meters and transmit customs forms electronically.

The number of country price groups for Express Mail International has expanded from 9 to 10 price groups. Country price group 10 is established for items sent to Australia and New Zealand.

**Priority Mail International**

Priority Mail International offers economical prices for reliable delivery of documents and merchandise, usually within 6 to 10 business days.

The price increase for retail Priority Mail International averages approximately 8.5 percent. The commercial base price for customers that prepare and pay for shipments online at *usps.com* or by using an authorized PC Postage vendor will remain 5 percent below the retail price. The availability of this commercial base price is expanded to include qualifying end-user customers that pay postage using IBI postage meters and transmit customs forms electronically.

The number of country price groups for Priority Mail International has expanded from 9 to 10 price groups. Country price group 10 is established for items sent to Australia and New Zealand.

The new Priority Mail International small flat-rate box is available to enhance customer choice, convenience, and ease of use. The box is identified by the words "Small Flat-Rate Box" printed on the packaging. The maximum weight is 4 lbs. Pricing for the new Priority Mail International small flat-rate box is \$10.95 for shipments to Canada or Mexico and \$12.95 for shipments to all other countries.

**Direct Sacks of Printed Matter to One Addressee (Airmail M-bags)**

M-bags are direct sacks of printed matter to one addressee. Prices are based on the total weight of the contents in the bag.

The price increase for retail Airmail M-bags averages approximately 8 percent.

The Postal Service hereby adopts the following changes to *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

**List of Subjects in 39 CFR Part 20**

Foreign relations, International postal services.

■ Accordingly, 39 CFR Part 20 is amended as follows:

**PART 20—[AMENDED]**

■ 1. The authority citation for 39 CFR Part 20 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3622, 3632 and 3633.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM), as follows:

**1 International Mail Services**

\* \* \* \* \*

**120 Preparation for Mailing**

\* \* \* \* \*

**123 Customs Forms and Online Shipping Labels**

\* \* \* \* \*

**123.6 Required Usage**

**123.61 Conditions**

\* \* \* \* \*

**Exhibit 123.61**

**Customs Declaration Form Usage by Mail Category**

*[Revise the Priority Mail International "Comment" section of Exhibit 123.61 as follows:]*

All items mailed in USPS-provided Priority Mail International packaging, except the Priority Mail flat-rate envelope or small flat-rate box, and any item bearing a Priority Mail sticker or marked with the words "Priority Mail" are considered parcels. Do not use PS Form 2976 (green label) on Priority Mail International parcels.

*[Revise the Priority Mail Flat-Rate Envelope section of Exhibit 123.61 by changing the title as follows:]*

**Priority Mail Flat-Rate Envelope and Small Flat-Rate Box**

\* \* \* \* \*

*[Revise the first sentence of the first footnote of Exhibit 123.61 as follows:]*

1. Placement of forms: Use PS Form 2976 (green label) for the Priority Mail International flat-rate envelope or small flat-rate box, and First-Class Mail International items under \$400 in value; affix the form to the address side of the package. \* \* \*

\* \* \* \* \*

**123.7 Completing Customs Forms**

\* \* \* \* \*

**123.72 PS Form 2976—A, Customs Declaration and Dispatch Note—CP 72****123.721 Sender's Preparation of PS Form 2976—A**

*[Revise item “o” to read as follows:]*

o. Affix PS Form 2976—A according to the class of mail, as follows:

1. For Priority Mail International parcels, with the exception of the flat-rate envelope and small flat-rate box, allow the Postal Service employee to complete PS Form 2976—A as described in 123.722, place the form set inside PS Form 2976—E (plastic envelope), and affix it to the address side of the package.

2. For a Priority Mail International flat-rate envelope, small flat-rate box, or First-Class Mail International item valued at \$400 or more, or if you do not want to list the contents on the outside wrapper of a Priority Mail International flat-rate envelope, small flat-rate box, or First-Class Mail International item, affix the upper portion only of PS Form 2976 (green label) (cut on dotted line and discard the lower portion) to the address side of the package, complete PS Form 2976—A, and enclose the form set inside the package.

**130 Mailability**

\* \* \* \* \*

**134 Valuable Articles****134.1 List of Articles**

*[Revise the introductory paragraph of 134.1 to read as follows:]*

The following valuable articles may be sent only by Registered Mail using First-Class Mail International service, Priority Mail International flat-rate envelope, Priority Mail International small flat-rate box, or as insured Priority Mail International. The articles are not mailable in Express Mail International or ordinary Priority Mail International shipments (see 221.2 and 233):

\* \* \* \* \*

**140 International Mail Categories****141 Definitions**

\* \* \* \* \*

**141.4 Priority Mail International**

*[Convert item “a” and “b” into a first and second paragraph. Revise the first sentence of the first paragraph 141.4 as follows:]*

Priority Mail International is governed by the parcels provisions of the Universal Postal Convention with the exception of the flat-rate envelope and small flat-rate box. \* \* \*

*[Revise the second paragraph in 141.4b to read as follows:]*

The Priority Mail International flat-rate envelope and small flat-rate box provide customers with an economical means of sending correspondence, documents, printed matter, and lightweight merchandise items to foreign destinations. The maximum weight limit is 4 pounds. Registered Mail service is available for the Priority Mail International flat-rate envelope and small flat-rate box. Insurance is not available for the Priority Mail International flat-rate envelope or small flat-rate box.

\* \* \* \* \*

**2 Conditions for Mailing****210 Global Express Guaranteed**

\* \* \* \* \*

**212 Postage Prices****212.1 Global Express Guaranteed Service Prices/Groups**

*[Revise 212.1 as follows:]*

See the Individual Country Listings for prices and country groups that offer Global Express Guaranteed.

*[Delete Exhibit 212.1 GXG price chart from this section.]*

**212.2 Commercial Base Prices****212.21 General**

*[Revise 212.21 by adding a new sentence after the first and before the second sentence as follows:]*

\* \* \* Commercial base prices also apply to qualifying end-user customers that pay postage using Information-Based Indicia (IBI) postage meters and transmit customs forms electronically. \* \* \*

**212.22 Online Prices**

*[Revise 212.22 by adding the following language at the end of the first sentence.]*

\* \* \* or to qualifying end-user customers who pay postage using Information-Based Indicia (IBI) postage

meters and transmit customs forms electronically. \* \* \*

\* \* \* \* \*

**220 Express Mail International**

\* \* \* \* \*

**222 Postage****222.1 Prices****222.11 Country Prices****Exhibit 222.11**

*[Revise Exhibit 222.11 by changing the prices as follows:]*

**Express Mail International Flat-Rate Envelope**

Canada & Mexico .....	\$25.95
All other countries .....	27.95

\* \* \* \* \*

**222.14 Online Prices—General**

*[Revise 222.14 by adding the following language at the end of the paragraph as follows:]*

\* \* \* Commercial base prices also apply to qualifying end-user customers that pay postage using Information-Based Indicia (IBI) postage meters and transmit customs forms electronically.

\* \* \* \* \*

**222.142 Online Prices**

*[Revise 222.142 by adding the following language at the end of the first sentence.]*

\* \* \* or for qualifying end-user customers who pay postage using Information-Based Indicia (IBI) postage meters and transmit customs forms electronically. \* \* \*

\* \* \* \* \*

**230 Priority Mail International****231 General**

*[Revise 231 as follows:]*

Priority Mail International is a parcel service with the exception of the flat-rate envelope and the small flat-rate box. Written correspondence having the nature of current and personal correspondence is not permitted in Priority Mail International parcels, but may be sent in the Priority Mail International flat-rate envelope or small flat-rate box.

*[Revise the title of 232 as follows:]*

**232 Priority Mail International Flat-Rate Envelope and Small Flat-Rate Box****232.1 General**

*[Revise 232.1 as follows:]*

All items that may be sent as First-Class Mail International (see 241) may be sent in the Priority Mail International flat-rate envelope or small flat-rate box provided the contents are mailable, they fit securely in the envelope or box, and

they are entirely confined within the container with the provided adhesive as the means of closure. The flap must close within the prefabricated fold. Tape may be applied to the flap and seams for closure or to reinforce, provided the design of the container is not enlarged by opening the sides and taping or reconstructing the container in any way. Registered Mail service is available. Insurance is not available.

### 232.2 Prices

*[Revise the text of the first sentence of 232.2 as follows:]*

The Priority Mail International flat-rate envelope and small flat-rate box are charged as a flat rate. \* \* \*

### Exhibit 232.2

*[Revise the title and prices of Exhibit 232.2 as follows:]*

#### Priority Mail International Flat-Rate Envelope and Small Flat-Rate Box

Canada & Mexico .....	\$10.95
All other countries .....	12.95

### 232.3 Weight Limit

*[Revise the text of 232.3 as follows.]*

The maximum weight for the flat-rate envelope and small flat-rate box is 4 pounds.

### 232.4 Customs Forms Required

*[Revise the text of 232.4 as follows:]*

All Priority Mail International flat-rate envelopes and small flat-rate boxes must bear a PS Form 2976 or 2976-A depending on the value and weight of the item.

*[Revise the heading of 233 as follows:]*

## 233 Priority Mail International Regular and Large Flat-Rate Boxes

### 233.1 General

*[Revise the text of the first sentence in paragraph one, add a new sentence after the first sentence and revise the first sentence in paragraph two of 233.1 as follows:]*

All mailable items that qualify to be sent as Priority Mail International may be sent in the Priority Mail regular and large flat-rate boxes (see 231). Items allowed in the Priority Mail International flat-rate envelope or small flat-rate box are not allowed to be sent in the Priority Mail International regular and large flat-rate boxes. \* \* \*

Regular and large flat-rate boxes may be insured. \* \* \*

\* \* \* \* \*

### 233.2 Prices

\* \* \* \* \*

*[Revise title and prices of Exhibit 233.2 as follows:]*

### Exhibit 233.2

#### Priority Mail International—Regular and Large Flat-Rate Boxes

International destination	Regular	Large
Canada & Mexico .....	\$25.95	\$32.95
All other countries .....	41.95	53.95

*[Revise “Note” of Exhibit 233.2 as follows:]*

**Note:** Indemnity for items mailed in the regular or large flat-rate boxes are based on the weight and indemnity limits shown in Exhibit 234.4.

### 233.3 Weight Limit

*[Revise 233.3 as follows:]*

The weight limit for the regular and large flat-rate box is 20 pounds.

### 233.4 Customs Forms Required

*[Revise 233.4 as follows:]*

Each regular or large Priority Mail International flat-rate box must bear a properly completed PS Form 2976-A.

### 234 Priority Mail International Parcels

\* \* \* \* \*

### 234.2 Indemnity

*[Revise the first sentence of 234.2 as follows:]*

Ordinary—i.e., uninsured—Priority Mail International parcels, except the small flat-rate box, include indemnity coverage against loss, damage, or rifling up to the amounts shown in Exhibit 234.4. \* \* \*

\* \* \* \* \*

*[Revise second “Note” in 234.2 as follows:]*

**Note:** Priority Mail International parcels including the regular and large flat-rate boxes may be insured but not the Priority Mail International flat-rate envelope or small flat-rate box (see 322).

\* \* \* \* \*

### 235 Postage

\* \* \* \* \*

### 235.2 Prices

\* \* \* \* \*

### 235.22 Online Prices

*[Revise the first sentence of 235.22 as follows:]*

Prices for Priority Mail International transactions conducted on Click-N-Ship, through an authorized PC Postage vendor, or by qualifying end-user customers that pay postage using Information-Based Indicia (IBI) postage meters and transmit customs forms

electronically, are 5 percent below retail prices. \* \* \*

\* \* \* \* \*

## 236 Weight and Size Limits

### 236.1 Weight Limits

*[Revise items “a” and “b” of 236.2 as follows:]*

a. Flat-rate envelope and small flat-rate box: 4 lbs.

b. Regular and large flat-rate boxes: 20 lbs.

\* \* \* \* \*

## 237 Mail Preparation

\* \* \* \* \*

### 237.4 Packaging

\* \* \* \* \*

### 237.45 Customs Forms Required

*[Revise 237.45 as follows:]*

All Priority Mail International parcels, except the small flat-rate box, must bear PS Form 2976-A.

\* \* \* \* \*

## 3 Extra Services

### 310 Certificate of Mailing

\* \* \* \* \*

### 312 Availability

*[Revise 312 as follows:]*

### 312.1 Certificate of Mailing—At Time of Purchase

Customers may purchase a certificate of mailing when sending:

- Postcards
- Unregistered First-Class Mail International items
- Free matter for the blind
- Priority Mail International flat-rate envelopes or small flat-rate boxes
- Ordinary (uninsured) Priority Mail International parcels including regular and large flat-rate boxes.

### 312.2 Additional Criteria

To obtain an additional certificate after mailing, the mailer must present the original certificate and an additional certificate endorsed “Duplicate” or a copy showing the original dates of mailing. The additional certificate must be postmarked to show the current date. A certificate of mailing cannot be obtained in combination with Registered Mail items, insured parcels, or bulk mailings of 200 pieces or more that bear a permit imprint.

\* \* \* \* \*

## 320 Insurance

### 321 Description

*[Revise first sentence of 321 as follows:]*

Insurance is provided against loss, damage, or rifling for Priority Mail International parcels except the small flat-rate box. \* \* \*

### 322 Availability

[Revise last sentence of 322 as follows:]

\* \* \* Insurance is not available for the Priority Mail International flat-rate envelope or small flat-rate box.

\* \* \* \* \*

### 330 Registered Mail

\* \* \* \* \*

### 332 Availability

[Revise the first sentence of 332 as follows:]

Customers can purchase Registered Mail service when they send Priority Mail International flat-rate envelopes, small flat-rate boxes, or First-Class Mail International items, postcards, and free matter for the blind. \* \* \*

\* \* \* \* \*

### 5 Nonpostal Export Regulations

\* \* \* \* \*

### 530 Commodities and Technical Data

\* \* \* \* \*

### 532 General Export Licenses

\* \* \* \* \*

#### 532.2 Restricted Destinations of General Export Licenses

\* \* \* \* \*

#### Exhibit 532.2 General License Symbols Not Permitted

\* \* \* \* \*

[Revise second sentence in first footnote of Exhibit 532.2 as follows:]

\* \* \* For Cuba, the Priority Mail International flat-rate envelope and

small flat-rate box (maximum weight: 4 lbs. each) is accepted. \* \* \*

\* \* \* \* \*

### 9 Inquiries, Indemnities, and Refunds

\* \* \* \* \*

### 920 Inquiries and Claims

#### 921 Inquiries

\* \* \* \* \*

#### 921.2 Initiating an Inquiry

[Revise the second sentence of 921.2 as follows:]

\* \* \* Inquiries are not accepted for ordinary letters, Priority Mail International flat-rate envelopes, Priority Mail International small flat-rate boxes, or M-bags. \* \* \*

\* \* \* \* \*

#### 921.5 General Procedures

##### 921.51 Nondelivery

[Revise the last sentence of 921.51 as follows:]

Inquiries are not accepted for Priority Mail International flat-rate envelopes, Priority Mail International small flat-rate boxes, ordinary letters, or M-bags.

\* \* \* \* \*

#### Country Price Groups and Weight Limits

\* \* \* \* \*

[Revise footnotes 1, 3, and 4 only as follows:]

<sup>1</sup> Priority Mail International flat-rate service maximum weight: flat-rate envelope and small flat-rate box, 4 lbs; regular and large flat-rate boxes, 20 lbs.

\* \* \* \* \*

<sup>3</sup> Bolivia: Priority Mail International package services to Bolivia are suspended. The Priority Mail International flat-rate envelope and small flat-rate box (maximum weight: 4 lbs. each) may be used.

<sup>4</sup> Cuba: Priority Mail International package services to Cuba are not available. The Priority Mail International flat-rate envelope and small flat-rate box (maximum weight: 4 lbs. each) may be used. Dutiable articles may not be mailed to Cuba except gift parcels up to 4 lbs. that must comply with the gift parcel rules published in 15 CFR § 740.12 for general provisions governing sanctions and for comprehensive information about goods and services that may not be imported to or exported from Cuba. Potentially dutiable items may be confiscated upon entering Cuba or returned to sender.

\* \* \* \* \*

[Revise the Country Price Groups and Weight Limits table for Australia and New Zealand by changing the Express Mail International and Priority Mail International price group number to '10'.]

\* \* \* \* \*

### Individual Country Listings

#### Country Conditions for Mailing

\* \* \* \* \*

[Make a global change to all countries except Somalia as follows:]

#### Customs Forms Required (123)

First-Class Mail International items and Priority Mail International flat-rate envelopes and small flat-rate boxes: PS Form 2976 or 2976-A (see 123.61)

\* \* \* \* \*

#### Priority Mail International—Flat Rate

[Revise the first line as follows:]

Flat-Rate Envelope or Small Flat-Rate Box: {Placeholder for price depending on individual country.}

\* \* \* \* \*

[Replace the current price tables in the Individual Country Listings with the following:]

#### GLOBAL EXPRESS GUARANTEED

Weight not over (lb.)	Price groups							
	1	2	3	4	5	6	7	8
0.5 .....	\$31.95	\$32.95	\$41.95	\$89.95	\$41.95	\$43.95	\$41.95	\$60.95
1 .....	50.00	54.00	59.00	106.00	67.00	68.00	54.00	76.00
2 .....	54.75	61.25	68.25	124.00	75.50	77.50	62.00	94.50
3 .....	59.50	68.50	77.50	142.00	84.00	87.00	70.00	113.00
4 .....	64.25	75.75	86.75	160.00	92.50	96.50	78.00	131.50
5 .....	69.00	83.00	96.00	178.00	101.00	106.00	86.00	150.00
6 .....	72.75	90.25	105.25	196.00	109.50	115.50	94.00	168.50
7 .....	76.50	97.50	114.50	214.00	118.00	125.00	102.00	187.00
8 .....	80.25	104.75	123.75	232.00	126.50	134.50	110.00	205.50
9 .....	84.00	112.00	133.00	250.00	135.00	144.00	118.00	224.00
10 .....	87.75	119.25	142.25	268.00	143.50	153.50	126.00	242.50
11 .....	91.50	123.50	147.50	282.00	150.00	162.00	132.00	255.00
12 .....	95.25	127.75	152.75	296.00	156.50	170.50	138.00	267.50
13 .....	99.00	132.00	158.00	310.00	163.00	179.00	144.00	280.00
14 .....	102.75	136.25	163.25	324.00	169.50	187.50	150.00	292.50
15 .....	106.50	140.50	168.50	338.00	176.00	196.00	156.00	305.00

## GLOBAL EXPRESS GUARANTEED

Weight not over (lb.)	Price groups							
	1	2	3	4	5	6	7	8
16 .....	110.25	144.75	173.75	352.00	182.50	204.50	162.00	317.50
17 .....	114.00	149.00	179.00	366.00	189.00	213.00	168.00	330.00
18 .....	117.75	153.25	184.25	380.00	195.50	221.50	174.00	342.50
19 .....	121.50	157.50	189.50	394.00	202.00	230.00	180.00	355.00
20 .....	125.25	161.75	194.75	408.00	208.50	238.50	186.00	367.50
21 .....	129.00	166.00	200.00	422.00	215.00	247.00	192.00	380.00
22 .....	132.75	170.25	205.25	436.00	221.50	255.50	198.00	392.50
23 .....	136.50	174.50	210.50	450.00	228.00	263.00	204.00	405.00
24 .....	140.25	178.75	215.75	464.00	234.50	270.50	210.00	417.50
25 .....	144.00	183.00	221.00	478.00	241.00	278.00	216.00	430.00
26 .....	147.75	186.50	226.25	492.00	247.50	285.50	222.00	442.50
27 .....	151.50	190.00	231.50	506.00	254.00	293.00	228.00	455.00
28 .....	155.25	193.50	236.75	520.00	260.50	300.50	234.00	467.50
29 .....	159.00	197.00	242.00	534.00	267.00	308.00	240.00	480.00
30 .....	162.75	200.50	247.25	548.00	273.50	315.50	246.00	492.50
31 .....	166.50	204.00	252.50	562.00	280.00	323.00	252.00	505.00
32 .....	170.25	207.50	257.75	576.00	286.50	330.50	258.00	517.50
33 .....	174.00	211.00	263.00	590.00	293.00	338.00	264.00	530.00
34 .....	177.75	214.50	268.25	604.00	299.50	345.50	270.00	542.50
35 .....	181.50	218.00	273.50	618.00	306.00	353.00	276.00	555.00
36 .....	185.25	221.50	278.75	632.00	312.50	360.50	282.00	567.50
37 .....	189.00	225.00	284.00	646.00	319.00	368.00	288.00	580.00
38 .....	192.75	228.50	289.25	660.00	325.50	375.50	294.00	592.50
39 .....	196.50	232.00	294.50	674.00	332.00	383.00	300.00	605.00
40 .....	200.25	235.50	299.75	688.00	338.50	390.50	306.00	617.50
41 .....	204.00	239.00	305.00	698.00	345.00	398.00	312.00	627.00
42 .....	207.75	242.50	310.25	708.00	351.50	405.50	318.00	636.50
43 .....	211.50	246.00	315.50	718.00	358.00	413.00	324.00	646.00
44 .....	215.25	249.50	320.75	728.00	364.50	420.50	330.00	655.50
45 .....	219.00	253.00	326.00	738.00	371.00	428.00	336.00	665.00
46 .....	222.75	256.50	331.25	748.00	377.50	435.50	342.00	674.50
47 .....	225.50	260.00	336.50	758.00	384.00	443.00	348.00	684.00
48 .....	228.25	263.50	341.75	768.00	390.50	450.50	354.00	693.50
49 .....	231.00	267.00	347.00	778.00	397.00	458.00	360.00	703.00
50 .....	233.75	270.50	352.25	788.00	403.50	465.50	366.00	712.50
51 .....	236.50	273.25	357.50	798.00	410.00	473.00	372.00	722.00
52 .....	239.25	276.00	362.75	808.00	416.50	480.50	378.00	731.50
53 .....	242.00	278.75	368.00	818.00	423.00	488.00	384.00	741.00
54 .....	244.75	281.50	373.25	828.00	429.50	495.50	390.00	750.50
55 .....	247.50	284.25	378.50	838.00	436.00	503.00	396.00	760.00
56 .....	250.25	287.00	383.75	848.00	442.50	510.50	402.00	769.50
57 .....	253.00	289.75	389.00	858.00	449.00	518.00	408.00	779.00
58 .....	255.75	292.50	394.25	868.00	455.50	525.50	414.00	788.50
59 .....	258.50	295.25	399.50	878.00	462.00	533.00	420.00	798.00
60 .....	261.25	298.00	404.75	888.00	468.50	540.50	426.00	807.50
61 .....	264.00	300.75	410.00	898.00	475.00	548.00	432.00	817.00
62 .....	266.75	303.50	415.25	908.00	480.50	555.50	438.00	826.50
63 .....	269.50	306.25	420.50	918.00	486.00	563.00	444.00	836.00
64 .....	272.25	309.00	425.75	928.00	491.50	570.50	450.00	845.50
65 .....	275.00	311.75	431.00	938.00	497.00	578.00	456.00	855.00
66 .....	277.75	314.50	436.25	948.00	502.50	585.50	462.00	864.50
67 .....	280.50	317.25	441.50	958.00	508.00	593.00	468.00	874.00
68 .....	283.25	320.00	446.75	968.00	513.50	600.50	474.00	883.50
69 .....	286.00	322.75	452.00	978.00	519.00	608.00	480.00	893.00
70 .....	288.75	325.50	457.25	988.00	524.50	615.50	486.00	902.50

## EXPRESS MAIL INTERNATIONAL

Weight not over (lb.)	Price groups									
	1	2	3	4	5	6	7	8	9	10
Flat-Rate Envelope .....	\$25.95	\$25.95	\$27.95	\$27.95	\$27.95	\$27.95	\$27.95	\$27.95	\$27.95	\$27.95
0.5 .....	25.95	25.95	27.95	27.95	27.95	27.95	27.95	27.95	27.95	27.95
1 .....	30.00	29.50	31.50	31.50	32.50	31.50	34.00	33.50	32.50	32.50
2 .....	33.50	33.25	36.25	35.75	37.00	35.75	38.75	38.50	37.00	37.75
3 .....	37.00	37.00	41.00	40.00	41.50	40.00	43.50	43.50	41.50	43.00
4 .....	40.50	40.75	45.75	44.25	46.00	44.25	48.25	48.50	46.00	48.25
5 .....	44.00	44.50	50.50	48.50	50.50	48.50	53.00	53.50	50.50	54.00
6 .....	47.25	48.25	55.25	52.25	54.75	53.75	58.25	58.50	55.75	59.75

## EXPRESS MAIL INTERNATIONAL—Continued

Weight not over (lb.)	Price groups									
	1	2	3	4	5	6	7	8	9	10
7 .....	50.50	52.00	60.00	56.00	59.00	59.00	63.50	63.50	61.00	65.50
8 .....	53.75	55.75	64.75	59.75	63.25	64.25	68.75	68.50	66.25	71.25
9 .....	57.00	59.50	69.50	63.50	67.50	69.50	74.00	73.50	71.50	77.00
10 .....	60.25	63.25	74.25	67.25	71.75	74.75	79.25	78.50	76.75	82.75
11 .....	63.75	66.00	79.50	71.50	76.00	80.50	85.00	84.25	82.00	88.50
12 .....	67.25	68.75	84.75	75.75	80.25	86.25	90.75	90.00	87.25	94.25
13 .....	70.75	71.50	90.00	80.00	84.50	92.00	96.50	95.75	92.50	100.00
14 .....	74.25	74.25	95.25	84.25	88.75	97.75	102.25	101.50	97.75	105.75
15 .....	77.75	77.00	100.50	88.50	93.00	103.50	108.00	107.25	103.00	111.50
16 .....	81.25	79.75	106.25	92.75	97.25	109.25	113.75	113.00	108.25	117.75
17 .....	84.75	82.50	112.00	97.00	101.50	115.00	119.50	118.75	113.50	124.00
18 .....	88.25	85.25	117.75	101.25	105.75	120.75	125.25	124.50	118.75	130.25
19 .....	91.75	88.00	123.50	105.50	110.00	126.50	131.00	130.25	124.00	136.50
20 .....	95.25	90.75	129.25	109.75	114.25	132.25	136.75	136.00	129.25	142.75
21 .....	98.75	93.50	135.00	114.00	118.50	138.00	142.50	141.75	134.50	149.00
22 .....	102.25	96.25	140.75	118.25	122.75	143.75	148.25	147.50	139.75	155.25
23 .....	105.75	99.00	146.50	122.50	127.00	149.50	154.00	153.25	145.00	161.50
24 .....	109.25	101.75	152.25	126.75	131.25	155.25	159.75	159.00	150.25	167.75
25 .....	112.75	104.50	158.00	131.00	135.50	161.00	165.50	164.75	155.50	174.00
26 .....	116.25	107.25	163.75	135.25	139.75	166.75	171.25	170.50	160.75	180.25
27 .....	119.75	110.00	169.50	139.50	144.00	172.50	177.00	176.25	166.00	186.50
28 .....	123.25	112.75	175.25	143.75	148.25	178.25	182.75	182.00	171.25	192.75
29 .....	126.75	115.50	181.00	148.00	152.50	184.00	188.50	187.75	176.50	199.00
30 .....	130.25	118.25	186.75	152.25	156.75	189.75	194.25	193.50	181.75	205.25
31 .....	133.75	121.00	192.50	156.50	161.00	195.50	200.00	199.25	187.00	211.50
32 .....	137.25	123.75	198.25	160.75	165.25	201.25	205.75	205.00	192.25	217.75
33 .....	140.75	126.50	204.00	165.00	169.50	207.00	211.50	210.75	197.50	224.00
34 .....	144.25	129.25	209.75	169.25	173.75	212.75	217.25	216.50	202.75	230.25
35 .....	147.75	132.00	215.50	173.50	178.00	218.50	223.00	222.25	208.00	236.50
36 .....	151.25	134.75	221.25	177.75	182.25	224.25	228.75	228.00	213.25	242.75
37 .....	154.75	137.50	227.00	182.00	186.50	230.00	234.50	233.75	218.50	249.00
38 .....	158.25	140.25	232.75	186.25	190.75	235.75	240.25	239.50	223.75	255.25
39 .....	161.75	143.00	238.50	190.50	195.00	241.50	246.00	245.25	229.00	261.50
40 .....	165.25	145.75	244.25	194.75	199.25	247.25	251.75	251.00	234.25	267.75
41 .....	168.75	148.50	250.00	199.00	203.50	252.50	257.50	256.75	239.50	274.00
42 .....	172.25	151.25	255.75	203.25	207.75	257.75	263.25	262.50	244.75	280.25
43 .....	175.75	154.00	261.50	207.50	212.00	263.00	269.00	268.25	250.00	286.50
44 .....	179.25	156.75	267.25	211.75	216.25	268.25	274.75	274.00	255.25	292.75
45 .....	182.75	.....	273.00	216.00	220.50	273.50	280.50	279.75	260.50	299.00
46 .....	186.25	.....	278.75	220.25	224.75	278.75	286.25	285.50	265.75	305.25
47 .....	189.75	.....	284.50	224.50	229.00	284.00	292.00	291.25	271.00	311.50
48 .....	193.25	.....	290.25	228.75	233.25	289.25	297.75	297.00	276.25	317.75
49 .....	196.75	.....	296.00	233.00	237.50	294.50	303.50	302.75	281.50	324.00
50 .....	200.25	.....	301.75	237.25	241.75	299.75	309.25	308.50	286.75	330.25
51 .....	203.75	.....	307.50	241.50	246.00	305.00	315.00	314.25	292.00	336.50
52 .....	207.25	.....	313.25	245.75	250.25	310.25	320.75	320.00	297.25	342.75
53 .....	210.75	.....	319.00	250.00	254.50	315.50	326.50	325.75	302.50	349.00
54 .....	214.25	.....	324.75	254.25	258.75	320.75	332.25	331.50	307.75	355.25
55 .....	217.75	.....	330.50	258.50	263.00	326.00	338.00	337.25	313.00	361.50
56 .....	221.25	.....	336.25	262.75	267.25	331.25	343.75	343.00	318.25	367.75
57 .....	224.75	.....	342.00	267.00	271.50	336.50	349.50	348.75	323.50	374.00
58 .....	228.25	.....	347.75	271.25	275.75	341.75	355.25	354.50	328.75	380.25
59 .....	231.75	.....	353.50	275.50	280.00	347.00	361.00	360.25	334.00	386.50
60 .....	235.25	.....	359.25	279.75	284.25	352.25	366.75	366.00	339.25	392.75
61 .....	238.75	.....	365.00	284.00	288.50	357.50	372.50	371.75	344.50	399.00
62 .....	242.25	.....	370.75	288.25	292.75	362.75	378.25	377.50	349.75	405.25
63 .....	245.75	.....	376.50	292.50	297.00	368.00	384.00	383.25	355.00	411.50
64 .....	249.25	.....	382.25	296.75	301.25	373.25	389.75	389.00	360.25	417.75
65 .....	252.75	.....	388.00	301.00	305.50	378.50	395.50	394.75	365.50	424.00
66 .....	256.25	.....	393.75	305.25	309.75	383.75	401.25	400.50	370.75	430.25
67 .....	.....	.....	399.50	309.50	314.00	389.00	407.00	406.25	376.00	.....
68 .....	.....	.....	405.25	313.75	318.25	394.25	412.75	412.00	381.25	.....
69 .....	.....	.....	411.00	318.00	322.50	399.50	418.50	417.75	386.50	.....
70 .....	.....	.....	416.75	322.25	326.75	404.75	424.25	423.50	391.75	.....

## PRIORITY MAIL INTERNATIONAL

Weight not over (lb.)	Price groups									
	1	2	3	4	5	6	7	8	9	10
Flat-Rate Envelope .....	\$10.95	\$10.95	\$12.95	\$12.95	\$12.95	\$12.95	\$12.95	\$12.95	\$12.95	\$12.95
Small Flat-Rate Box .....	10.95	10.95	12.95	12.95	12.95	12.95	12.95	12.95	12.95	12.95
Regular Flat-Rate Box .....	25.95	25.95	41.95	41.95	41.95	41.95	41.95	41.95	41.95	41.95
Large Flat-Rate Box .....	32.95	32.95	53.95	53.95	53.95	53.95	53.95	53.95	53.95	53.95
1 .....	19.00	19.00	25.00	23.50	26.50	25.00	24.00	23.00	23.00	26.50
2 .....	20.75	22.75	29.25	27.25	29.75	29.25	28.50	27.25	26.75	31.35
3 .....	22.50	26.50	33.50	31.00	33.00	33.50	33.00	31.50	30.50	36.20
4 .....	24.25	30.25	37.75	34.75	36.25	37.75	37.50	35.75	34.25	41.05
5 .....	26.00	34.00	42.00	38.50	39.50	42.00	42.00	40.00	38.00	45.90
6 .....	27.75	36.75	45.75	42.25	42.50	47.25	46.50	44.25	40.75	51.05
7 .....	29.50	39.50	49.50	46.00	45.50	52.50	51.00	48.50	43.50	56.20
8 .....	31.25	42.25	53.25	49.75	48.50	57.75	55.50	52.75	46.25	61.35
9 .....	33.00	45.00	57.00	53.50	51.50	63.00	60.00	57.00	49.00	66.50
10 .....	34.75	47.75	60.75	57.25	54.50	68.25	64.50	61.25	51.75	71.65
11 .....	36.50	50.00	64.50	61.00	57.50	73.50	69.50	66.00	55.50	76.80
12 .....	38.25	52.25	68.25	64.75	60.50	78.75	74.50	70.75	59.25	81.95
13 .....	40.00	54.50	72.00	68.50	63.50	84.00	79.50	75.50	63.00	87.10
14 .....	41.75	56.75	75.75	72.25	66.50	89.25	84.50	80.25	66.75	92.25
15 .....	43.50	59.00	79.50	76.00	69.50	94.50	89.50	85.00	70.50	97.40
16 .....	45.25	61.25	83.25	79.75	72.50	99.75	94.50	89.75	74.25	102.55
17 .....	47.00	63.50	87.00	83.50	75.50	105.00	99.50	94.50	78.00	107.70
18 .....	48.75	65.75	90.75	87.25	78.50	110.25	104.50	99.25	81.75	112.85
19 .....	50.50	68.00	94.50	91.00	81.50	115.50	109.50	104.00	85.50	118.00
20 .....	52.25	70.25	98.25	94.75	84.50	120.75	114.50	108.75	89.25	123.15
21 .....	54.00	72.50	102.00	98.50	87.50	126.00	119.50	113.50	93.00	128.30
22 .....	55.75	74.75	105.75	102.25	90.50	131.25	124.50	118.25	96.75	133.45
23 .....	57.50	77.00	109.50	106.00	93.50	136.50	129.50	123.00	100.50	138.60
24 .....	59.25	79.25	113.25	109.75	96.50	141.75	134.50	127.75	104.25	143.75
25 .....	61.00	81.50	117.00	113.50	99.50	147.00	139.50	132.50	108.00	148.90
26 .....	62.75	83.75	120.75	117.25	102.50	152.25	144.50	137.25	111.75	154.05
27 .....	64.50	86.00	124.50	121.00	105.50	157.50	149.50	142.00	115.50	159.20
28 .....	66.25	88.25	128.25	124.75	108.50	162.75	154.50	146.75	119.25	164.35
29 .....	68.00	90.50	132.00	128.50	111.50	168.00	159.50	151.50	123.00	169.50
30 .....	69.75	92.75	135.75	132.25	114.50	173.25	164.50	156.25	126.75	174.65
31 .....	71.50	95.00	139.50	136.00	117.50	178.50	169.50	161.00	130.50	179.80
32 .....	73.25	97.25	143.25	139.75	120.50	183.75	174.50	165.75	134.25	184.95
33 .....	75.00	99.50	147.00	143.50	123.50	189.00	179.50	170.50	138.00	190.10
34 .....	76.75	101.75	150.75	147.25	126.50	194.25	184.50	175.25	141.75	195.25
35 .....	78.50	104.00	154.50	151.00	129.50	199.50	189.50	180.00	145.50	200.40
36 .....	80.25	106.25	158.25	154.75	132.50	204.75	194.50	184.75	149.25	205.55
37 .....	82.00	108.50	162.00	158.50	135.50	210.00	199.50	189.50	153.00	210.70
38 .....	83.75	110.75	165.75	162.25	138.50	215.25	204.50	194.25	156.75	215.85
39 .....	85.50	113.00	169.50	166.00	141.50	220.50	209.50	199.00	160.50	221.00
40 .....	87.25	115.25	173.25	169.75	144.50	225.75	214.50	203.75	164.25	226.15
41 .....	89.00	117.50	177.00	173.50	147.50	231.00	219.50	208.50	168.00	231.30
42 .....	90.75	119.75	180.75	177.25	150.50	236.25	224.50	213.25	171.75	236.45
43 .....	92.50	122.00	184.50	181.00	153.50	241.50	229.50	218.00	175.50	241.60
44 .....	94.25	124.25	188.25	184.75	156.50	246.75	234.50	222.75	179.25	246.75
45 .....	96.00	.....	192.00	188.50	159.50	252.00	239.50	227.50	183.00	251.90
46 .....	97.75	.....	195.75	192.25	162.50	257.25	244.50	232.25	186.75	257.05
47 .....	99.50	.....	199.50	196.00	165.50	262.50	249.50	237.00	190.50	262.20
48 .....	101.25	.....	203.25	199.75	168.50	267.75	254.50	241.75	194.25	267.35
49 .....	103.00	.....	207.00	203.50	171.50	273.00	259.50	246.50	198.00	272.50
50 .....	104.75	.....	210.75	207.25	174.50	278.25	264.50	251.25	201.75	277.65
51 .....	106.50	.....	214.50	211.00	177.50	283.50	269.50	256.00	205.50	282.80
52 .....	108.25	.....	218.25	214.75	180.50	288.75	274.50	260.75	209.25	287.95
53 .....	110.00	.....	222.00	218.50	183.50	294.00	279.50	265.50	213.00	293.10
54 .....	111.75	.....	225.75	222.25	186.50	299.25	284.50	270.25	216.75	298.25
55 .....	113.50	.....	229.50	226.00	189.50	304.50	289.50	275.00	220.50	303.40
56 .....	115.25	.....	233.25	229.75	192.50	309.75	294.50	279.75	224.25	308.55
57 .....	117.00	.....	237.00	233.50	195.50	315.00	299.50	284.50	228.00	313.70
58 .....	118.75	.....	240.75	237.25	198.50	320.25	304.50	289.25	231.75	318.85
59 .....	120.50	.....	244.50	241.00	201.50	325.50	309.50	294.00	235.50	324.00
60 .....	122.25	.....	248.25	244.75	204.50	330.75	314.50	298.75	239.25	329.15
61 .....	124.00	.....	252.00	248.50	207.50	336.00	319.50	303.50	243.00	334.30
62 .....	125.75	.....	255.75	252.25	210.50	341.25	324.50	308.25	246.75	339.45
63 .....	127.50	.....	259.50	256.00	213.50	346.50	329.50	313.00	250.50	344.60
64 .....	129.25	.....	263.25	259.75	216.50	351.75	334.50	317.75	254.25	349.75
65 .....	131.00	.....	267.00	263.50	219.50	357.00	339.50	322.50	258.00	354.90
66 .....	132.75	.....	270.75	267.25	222.50	362.25	344.50	327.25	261.75	360.05

## PRIORITY MAIL INTERNATIONAL—Continued

Weight not over (lb.)	Price groups									
	1	2	3	4	5	6	7	8	9	10
67 .....	.....	.....	274.50	271.00	225.50	367.50	349.50	332.00	265.50	.....
68 .....	.....	.....	278.25	274.75	228.50	372.75	354.50	336.75	269.25	.....
69 .....	.....	.....	282.00	278.50	231.50	378.00	359.50	341.50	273.00	.....
70 .....	.....	.....	285.75	282.25	234.50	383.25	364.50	346.25	276.75	.....

## AIRMAIL M-BAG PRICES

Price group	Weight not over 11 lbs.	Additional per lb.
1 .....	\$26.95	\$2.45
2 .....	28.60	2.60
3 .....	55.00	5.00
4 .....	46.20	4.20
5 .....	35.75	3.25
6 .....	56.10	5.10
7 .....	46.75	4.25
8 .....	46.75	4.25
9 .....	44.00	4.00

Neva R. Watson,

Attorney, Legislative.

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## POSTAL SERVICE

## 39 CFR Part 20

## International Product and Price Changes

AGENCY: Postal Service.™

ACTION: Final rule.

**SUMMARY:** The Postal Service is revising *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM®), to reflect changes to the prices and product features for Mailing and Shipping Services.

**DATES:** *Effective Date:* May 11, 2009. We will implement this international price change concurrent with our domestic Mailing Services price change.

**FOR FURTHER INFORMATION CONTACT:** Obataiye B. Akinwale at 703-292-5260 or Rick Klutts at 813-877-0372.

**SUPPLEMENTARY INFORMATION:** The Governors of the Postal Service established new prices and product features for some of our Mailing and Shipping Services. This **Federal Register** final rule describes the international price and product changes by mail category as follows:

## First-Class Mail International

First-Class Mail International service provides a reliable and economical means of sending correspondence (e.g., letters and postcards), documents, and lightweight merchandise weighing up to 4 pounds.

## Postcards

Postcards consist of single cards sent without a wrapper or envelope. The price structure for postcards is expanded to include three separate prices: Canada, Mexico, and all other countries. Previously Canada and Mexico were priced the same.

## International Priority Airmail (IPA)

IPA is a commercial service designed to meet the needs of the business mailer. It is available for volume mailings of all First-Class Mail International postcards, letters, large envelopes (flats), and packages (small packets). IPA service is more economical than regular First-Class Mail International service. Customers must tender only First-Class International items and must meet specified volume and sortation requirements. Each IPA mailing must weigh a minimum of 50 pounds. To achieve the 50-pound minimum, a mailing may consist of a combination of presorted mail, worldwide nonpresort mail, and M-bags.

To better capitalize on revenue opportunities and to reduce operational costs we have expanded our price groups from 9 to 15. In addition, there are also numerous IPA structural changes that include:

- Seven new country specific price groups. Previously, there were three country specific price groups (Canada, Mexico and Australia) and six other price groups containing multiple countries. There are now ten specific price groups, and five price groups that will contain multiple countries. The ten country specific price groups are:

Country	Price group
Canada .....	1
Mexico .....	2
Great Britain & Northern Ireland ....	3
Germany .....	4
France .....	5
Switzerland .....	6
Italy .....	7
Netherlands .....	8
Australia .....	9
Japan .....	10

- To provide consistency and ease of use, we aligned eligibility and preparation requirements for

International Priority Airmail™ (IPA®) and International Surface Air Lift® (ISAL®) service where possible.

- Currently, both direct country and mixed country sacks can be entered at the full service or destination International Service Center (ISC) drop shipment prices. Effective May 11, 2009, only direct country sacks can be entered at the full service price. All other mail must be entered at the worldwide nonpresort price.

- The minimum weight for direct country and mixed country sacks (ISC drop shipment only) is now 5 pounds.
- The minimum volume requirements are now the same for IPA and ISAL mailings—50 pounds.

## Direct Sacks of Printed Matter to One Addressee (IPA M-Bags)

M-bags are direct sacks of printed matter to one addressee. Prices are based on the total weight of the contents in the sack.

## International Surface Air Lift (ISAL)

ISAL is a commercial service, which provides expedited dispatch and transportation for all types of First-Class Mail International items weighing up to 4 pounds. Each ISAL mailing must weigh a minimum of 50 pounds. To achieve the 50-pound minimum, a mailing may consist of a combination of presorted mail, worldwide nonpresort mail, and M-bags.

The structural changes noted above for IPA also apply to ISAL. In addition to those changes, the worldwide nonpresort price previously only available for IPA will now also be available for ISAL. This change will eliminate ISAL residual sacks.

Presort and drop shipment prices, as well as volume pricing, are still available for commercial customers who meet international customized mail program requirements. Postage for ISAL is based on country price groups.

## Direct Sacks of Printed Matter to One Addressee (ISAL M-Bags)

M-bags are direct sacks of printed matter to one addressee. Prices are based on the total weight of the contents in the bag.

**International Extra Services**

Customers may add value to the way mail is shipped or received with a variety of extra services, including: Certificate of mailing, Registered Mail™, restricted delivery, return receipt, business reply cards and envelopes, reply coupons, international postal money orders, and insurance for Global Express Guaranteed®, Express Mail International®, and Priority Mail International™ (parcels).

We revised the prices for the following international extra services: Express Mail International insurance, Priority Mail International insurance, Registered Mail, restricted delivery, and return receipt.

The Postal Service hereby adopts the following changes to *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM), which is incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 20.1

**List of Subjects in 39 CFR Part 20**

Foreign relations, International postal services.

■ Accordingly, 39 CFR Part 20 is amended as follows:

**PART 20—[AMENDED]**

■ 1. The authority citation for 39 CFR Part 20 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3622, 3632 and 3633.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM), as follows:

\* \* \* \* \*

**2 Conditions for Mailing**

\* \* \* \* \*

**220 Express Mail International****221 Description**

\* \* \* \* \*

**221.3 Insurance and Indemnity****221.31 Express Mail International Merchandise Insurance**

[Revise 221.31 to read as follows:]

Express Mail International merchandise insurance coverage against loss, damage, or rifling is provided up to \$100 at no additional charge. Additional insurance coverage above \$100 and up to a maximum of \$5,000 may be purchased at the sender's option. See Individual Country Listings for merchandise insurance limits. The fee schedule for optional Express Mail International merchandise insurance coverage is as follows:

[Add new Express Mail insurance chart as follows:]

**International Insurance****EXPRESS MAIL INTERNATIONAL INSURANCE**

Indemnity limit not over	Fee
\$0.01 to \$100 .....	\$0.00
100.01 to 200 .....	0.75
200.01 to 500 .....	2.15
500.01 to 1,000 .....	3.55
1,000.01 to 1,500 .....	4.95
1,500.01 to 2,000 .....	6.35
2,000.01 to 2,500 .....	7.75
2,500.01 to 3,000 .....	9.15
3,000.01 to 3,500 .....	10.55
3,500.01 to 4,000 .....	11.95
4,000.01 to 4,500 .....	13.35
4,500.01 to 5,000 .....	14.75

\* \* \* \* \*

**240 First-Class Mail International**

\* \* \* \* \*

**243 Physical Characteristics****243.1 Postcards**

\* \* \* \* \*

**243.13 Postage Prices and Fees**

[Revise items 243.13a and b, and add new item c as follows:]

The postage prices for postcards are as follows:

- a. Canada: \$0.75.
- b. Mexico: \$0.79.
- c. All other countries: \$0.98.

\* \* \* \* \*

**290 Commercial Services**

\* \* \* \* \*

[Delete current 292 in its entirety and replace to read as follows:]

**292 International Priority Airmail (IPA) Service****292.1 Description****292.11 General**

International Priority Airmail (IPA) service is available for volume mailings of all First-Class Mail International postcards, letters, large envelopes (flats), and packages (small packets). The sender must prepare mailpieces in accordance with the shape-based requirements of First-Class Mail International service (see 240) and the requirements of this subchapter. Separate prices are provided for International Service Center (ISC) drop shipments, presorted mail, and worldwide nonpresort mail. Volume incentives are available through customized agreements.

**292.12 IPA M-Bags**

IPA M-bags (direct sacks of printed matter to one addressee) may be entered in conjunction with an IPA mailing, are subject to the provisions of 260, and may be sent to all destination countries that are referenced in Exhibit 292.452. When using this method of mail preparation, the sender must complete PS Tag 115, *International Priority Airmail*, and PS Tag 158, *M-bag Addressee Tag*. Tags must be attached securely to the neck of the sack.

**292.2 Eligibility****292.21 Qualifying Mailpieces**

Any First-Class Mail International mailpiece that meets the characteristics as defined in 141.5 qualifies. Mailpieces do not have to be of the same size and weight to qualify. Any item sent by IPA must conform to the weight and size limits for First-Class Mail International postcards, letters, large envelopes (flats), and packages (small packets) as described in 240.

**292.22 Availability**

IPA service is available to all foreign countries, as listed in Exhibit 292.452, which shows the price group assigned to each country.

**292.23 Minimum Quantity Requirements****292.231 Minimum Quantity**

All mailings must meet a minimum weight quantity of 50 pounds. To achieve the 50-pound minimum, mailings may include a combination of presorted mail, worldwide nonpresort mail, or M-bags.

**292.232 Presort Eligibility—Full Service**

Only direct country sacks containing a minimum of 5 pounds in each sack qualify for the presort price. All remaining mail must be prepared and paid at the worldwide nonpresort price.

**292.233 Presort Eligibility—ISC Drop Shipment**

Only direct country sacks and mixed country sacks containing a minimum of 5 pounds in each sack qualify for the presort price. Price groups containing less than 5 pounds must be prepared and paid at the worldwide nonpresort price.

**292.24 Dutiable Items**

Dutiable items may be sent in accordance with the applicable rules in this subchapter for each respective category of mail. Priority Mail International items, either ordinary or insured, may not be mailed as IPA.

**292.25 Customs Forms Requirements**

See 123 for customs forms requirements.

**292.26 Extra Services**

Extra services are not available for items sent by IPA.

**292.3 Prices and Postage Payment Methods****292.31 Prices****292.311 General**

IPA service has two price options: a presort price option with 15 price groups, and a worldwide nonpresort price (292.311a). Both options offer full service prices (292.311b) for mail deposited at offices other than the drop shipment offices listed in 292.531; and drop shipment prices (292.311c) for

mail deposited at one of the drop shipment offices. The per-piece price and per-pound price are shown in Exhibit 292.311a. The per-piece price applies to each piece regardless of its weight. The per-pound price applies to the net weight (gross weight minus tare weight of sack or tray) of the mail for the specific price group. Fractions of a pound are rounded to the next whole pound for postage calculation.

Exhibit 292.311a

**INTERNATIONAL PRIORITY AIRMAIL (IPA) PRICES**

Direct country sacks				Mixed country sacks		
Price group	Per piece	Full service per lb.	ISC drop shipment per lb.	Per piece	Full service per lb.	ISC drop shipment per lb.
1 .....	\$0.43	\$7.12	\$4.62	.....	.....	.....
2 .....	0.15	6.69	4.19	.....	.....	.....
3 .....	0.42	9.07	6.57	.....	.....	.....
4 .....	0.45	9.52	7.02	.....	.....	.....
5 .....	0.43	9.26	6.76	.....	.....	.....
6 .....	0.44	9.26	6.76	.....	.....	.....
7 .....	0.42	9.00	6.50	.....	.....	.....
8 .....	0.41	9.00	6.50	.....	.....	.....
9 .....	0.33	9.97	7.47	.....	.....	.....
10 .....	0.41	9.20	6.70	.....	.....	.....
11 .....	0.40	9.00	6.50	\$0.42	.....	\$6.83
12 .....	0.15	8.00	5.50	0.16	.....	5.78
13 .....	0.16	7.35	4.85	0.17	.....	5.10
14 .....	0.15	9.00	6.50	0.16	.....	6.83
15 .....	0.12	9.50	7.00	0.13	.....	7.35

**WORLDWIDE NONPRESORT SACKS**

Price group	Per piece	Full service per lb.	ISC drop shipment per lb.
n/a .....	\$0.47	\$10.98	\$8.09

Exhibit 292.311b

**INTERNATIONAL PRIORITY AIRMAIL (IPA) M-BAG—FULL SERVICE**

Price group	Full service per lb.
1 .....	\$4.60
2 .....	5.20
3 .....	6.10
4 .....	6.10
5 .....	6.10
6 .....	6.10

**INTERNATIONAL PRIORITY AIRMAIL (IPA) M-BAG—FULL SERVICE—Continued**

Price group	Full service per lb.
7 .....	6.10
8 .....	6.10
9 .....	8.10
10 .....	7.65
11 .....	6.10
12 .....	6.90
13 .....	6.70

**INTERNATIONAL PRIORITY AIRMAIL (IPA) M-BAG—FULL SERVICE—Continued**

Price group	Full service per lb.
14 .....	7.45
15 .....	7.35

Note: Full Service M-bags are subject to the minimum price for 11 lbs.

Exhibit 292.311c

**INTERNATIONAL PRIORITY AIRMAIL (IPA) M-BAG—ISC DROP SHIPMENT**

Price group	5 lbs.	6 lbs.	7 lbs.	8 lbs.	9 lbs.	10 lbs.	11 lbs.	Each additional pound
1 .....	\$19.30	\$19.75	\$20.20	\$20.65	\$21.10	\$21.55	\$22.00	\$2.00
2 .....	25.00	25.60	26.20	26.80	27.40	28.00	28.60	2.60
3 .....	30.85	31.85	32.85	33.85	34.85	35.85	36.85	3.35
4 .....	30.85	31.85	32.85	33.85	34.85	35.85	36.85	3.35
5 .....	30.85	31.85	32.85	33.85	34.85	35.85	36.85	3.35
6 .....	30.85	31.85	32.85	33.85	34.85	35.85	36.85	3.35

## INTERNATIONAL PRIORITY AIRMAIL (IPA) M-BAG—ISC DROP SHIPMENT—Continued

Price group	5 lbs.	6 lbs.	7 lbs.	8 lbs.	9 lbs.	10 lbs.	11 lbs.	Each additional pound
7 .....	30.85	31.85	32.85	33.85	34.85	35.85	36.85	3.35
8 .....	30.85	31.85	32.85	33.85	34.85	35.85	36.85	3.35
9 .....	47.75	49.60	51.45	53.30	55.15	57.00	58.85	5.35
10 .....	44.50	46.25	48.00	49.75	51.50	53.25	55.00	5.00
11 .....	30.85	31.85	32.85	33.85	34.85	35.85	36.85	3.35
12 .....	38.75	39.90	41.05	42.20	43.35	44.50	45.65	4.15
13 .....	38.65	39.45	40.25	41.05	41.85	42.65	43.45	3.95
14 .....	44.80	45.95	47.10	48.25	49.40	50.55	51.70	4.70
15 .....	42.50	43.85	45.20	46.55	47.90	49.25	50.60	4.60

Note: ISC Drop Shipment M-bags are subject to the minimum price for 5 lbs.

**292.32 Computation of Postage**

Postage is computed on PS Form 3700, *Postage Statement—International Mail*.

**292.321 Computing Worldwide Nonpresort Prices**

To compute postage at the worldwide nonpresort price multiply the number of pieces in the mailing by the applicable per-piece price, multiply the net weight (in whole pounds) of the entire mailing by the applicable per-pound price, and then add the two totals together.

**292.322 Computing Presort Prices**

To compute postage at the presorted price multiply the number of pieces in the mailing destined for countries in a specific price group by the appropriate per-piece price, multiply the net weight (in whole pounds) of those pieces by the corresponding per-pound price, and then add the two totals together.

**292.33 Postage Payment Methods****292.331 General**

Postage must be paid by postage meter, permit imprint, or precanceled stamps (see DMM 604).

**292.332 Postage Meter**

Payments made by postage meter are subject to the following standards:

a. *Piece Price*. The applicable per piece postage shown in 292.311a must be affixed to each mailpiece when paying with a meter. Mailers who have an ICM agreement must affix the applicable per piece postage as set forth in their ICM agreement.

b. *Pound Price*. Postage for the pound price portion must be paid either by meter stamp(s) attached to the postage statement or from the mailer's authorized permit imprint advance deposit account.

c. *Postage Endorsement*. Each piece must be legibly endorsed with the words "INTERNATIONAL PRIORITY AIRMAIL."

d. *Specifications for Endorsement*. The endorsement required in 292.332c

must appear on the address side of each piece and must be applied by a printing press, hand stamp, or other similar printing device. It must be printed above the name of the addressee and to the left or below the postage, or it may be printed adjacent to the meter stamp in either the postal inscription slug area or ad plate area. If the postal endorsement appears in the ad plate area, no other information may be printed in the ad plate. The endorsement may not be typewritten or hand-drawn. The endorsement is not considered adequate if it is included as part of a decorative design or advertisement.

e. *Unmarked Pieces*. Unmarked pieces lacking the postage endorsement are subject to the First-Class Mail International single-piece price.

f. *Drop Shipment of Metered Mail*. Mailers who want to enter metered IPA mail at a Post Office facility other than where the meter is licensed must obtain a drop shipment authorization. To obtain an authorization, the mailer must submit a written request to the postmaster at the office where the mail will be entered (see DMM 705).

**292.333 Precanceled Stamps**

Payments made by precanceled stamps are subject to the following standards:

a. *Piece Price*. The same denomination of stamp must be affixed to every piece in the mailing.

b. *Pound Price*. Additional postage is paid at the time of mailing by advance deposit account or meter stamp affixed to the back of the accompanying postage statement.

c. *Postage Endorsement*. Each piece must be legibly endorsed with the words "INTERNATIONAL PRIORITY AIRMAIL."

d. *Specifications for Endorsement*. The endorsement required in 292.333c must appear on the address side of each piece and must be applied by a printing press, hand stamp, or other similar printing device. It must be printed

above the name of the addressee and to the left or below the postage, or it may be printed adjacent to the precanceled stamp. The endorsement may not be typewritten or hand-drawn. The endorsement is not considered adequate if it is included as part of a decorative design or advertisement.

e. *Unmarked Pieces*. Unmarked pieces lacking the postage endorsement are subject to the First-Class Mail International single-piece price.

**292.334 Permit Imprint**

Mailers may use a permit imprint for mailings that contain identical weight pieces. Any of the permit imprints shown in Exhibit 152.44 are acceptable. Postage is calculated as described in 292.32 and is deducted from the mailer's advance deposit account. Permit imprints must not denote bulk mail, nonprofit, or other domestic or special mail. Mailers may use permit imprint with nonidentical weight pieces only if authorized to use postage mailing systems under DMM 705.

**292.4 Mail Preparation****292.41 Addressing**

International Priority Airmail is subject to the addressing requirements contained in 122.

a. *Exception—Canada*: International Priority Airmail items destined for Canada must have the applicable alphanumeric postcode included in the delivery address. See 122.1k for the address formatting requirements that generally apply to mailpieces sent to Canada.

b. *Exception—Direct Country Sacks*: International Priority Airmail in direct country sacks (see 292.461) is not subject to the interline addressing requirement that is specified in 122.1d. At the sender's risk, the English translation of the destination Post Office or city name may be omitted from printed addresses that are in Russian, Greek, Arabic, Hebrew, Cyrillic, Japanese, or Chinese characters. An

English translation of the country name (e.g., Japan) is still required on the individual mailpieces.

## 292.42 Marking

### 292.421 Letter-Size and Flat-Size Mailpieces

The sender should mark "PAR AVION" or "AIR MAIL" on the address side of each piece. Use of bordered airmail envelopes is optional and may be used for items sent in this service if the envelope contains the "AIR MAIL" endorsement.

### 292.422 Packages (Small Packets)

Items that might be mistaken for another class of mail due to size, weight, or appearance should be marked "LETTER-POST" on the address side.

## 292.43 Sealing

Mail that is sent via IPA service may be sealed at the sender's option. See 244.4 for the packaging methods that are applicable to all First-Class Mail International items.

*Exception:* For direct country sacks only, First-Class Mail International folded mailpieces, without envelopes, are permitted provided one of the following methods is used:

1. All of the open sides are secured with tape, tabs, or wafer seals of sufficient quantity and strength to prevent the mailpieces from opening or being damaged during postal handling.
2. The mailpieces meet the physical standards and tabbing requirements in DMM 201.3.

## 292.44 Physical Characteristics and Requirements for All Bundles

The following standards apply:

a. *Thickness.* Bundles of letter-size mail must be no thicker than approximately a handful of mail (4 to 6 inches thick). Bundles of flat-size mail may be thicker than 6 inches but must not weigh more than 11 pounds.

b. *Securing Bundles.* Each bundle must be securely tied to withstand normal transit. Placing rubber bands around the length and then the girth is the preferred method of securing bundles of letter-size mail. Plastic strapping placed around the length and then the girth is the preferred method of securing bundles of flat-size mail.

c. *Separation of Bundles.* Letter-size and flat-size mail must be bundled separately.

d. *Facing of Pieces.* All pieces in bundles must be faced in the same direction.

## 292.45 Sortation

### 292.451 Presort Mailings—General

Follow these steps when preparing IPA presort mail (except for mail to Canada):

a. *Full Service.* For presort mailings, all mail addressed to an individual country that contains 5 pounds or more must be sorted into direct country bundles and sacked in direct country sacks. Mail that cannot be made up into direct country sacks must be prepared and entered at the worldwide nonpresort price.

b. *ISC Drop Shipment.* For presort mailings, all mail addressed to an individual country that contains 5 pounds or more must be sorted into direct country bundles and sacked in direct country sacks. Next, all mail addressed to individual countries within a single price group containing 5 pounds or more must be bundled separately and prepared in mixed country sacks. Mail that ultimately cannot be made up into direct country sacks or mixed country sacks must be prepared and entered at the worldwide nonpresort price.

**Note:** There are separate preparation requirements for mail to Canada. See 292.47.

### 292.452 Presorted Mail—Direct Country Bundle Label

A label (facing slip) for direct country bundles prepared in mixed country sacks must be completed and placed on the address side of the top piece of each bundle in such a manner that it will not become separated from the bundle. The pressure-sensitive labels and optional endorsement lines used domestically for presort mail are prohibited for IPA. Bundle labels (see Exhibit 292.452) must contain the following:

Line 1: Foreign Exchange Office.  
Line 2: Country of Destination.  
Line 3: Mailer, Mailer Location.

*Example:*

1150 VIENNA FLUG  
AUSTRIA  
RBA COMPANY, WASHINGTON DC

Exhibit 292.452

## IPA COUNTRY PRICE GROUPS AND FOREIGN EXCHANGE OFFICES

Price group	Country	Destination code	Exchange office name
15 .....	Afghanistan .....	KBL .....	Kabul.
12 .....	Albania .....	TIA .....	Tirana.
15 .....	Algeria .....	ALG .....	Algiers.
11 .....	Andorra <sup>1</sup> .....		
15 .....	Angola .....	LAD .....	Luanda.
13 .....	Anguilla .....	AXA .....	The Valley.
13 .....	Antigua and Barbuda .....	ANU .....	St. John's.
13 .....	Argentina .....	BUE .....	Buenos Aires Avion.
15 .....	Armenia .....	EVN .....	Yerevan.
13 .....	Aruba .....	AUA .....	Oranjestad.
12 .....	Ascension <sup>1</sup> .....		
9 .....	Australia <sup>2</sup> .....	SYD .....	Sydney.
11 .....	Austria .....	VIE .....	1000 Wien.
15 .....	Azerbaijan .....	BAK .....	Baku.
11 .....	Azores <sup>1</sup> .....		
13 .....	Bahamas .....	NAS .....	Nassau.
15 .....	Bahrain .....	BAH .....	Bahrain.
15 .....	Bangladesh .....	DAC .....	Dhaka Apt.
13 .....	Barbados .....	BGI .....	Bridgetown.
12 .....	Belarus .....	MSQ .....	Minsk PI 2.
11 .....	Belgium .....	BRU .....	Brussels EMC.
13 .....	Belize .....	BZE .....	Belize City.
15 .....	Benin .....	COO .....	Cotonou.
13 .....	Bermuda .....	BDA .....	Hamilton.
15 .....	Bhutan <sup>1</sup> .....		

## IPA COUNTRY PRICE GROUPS AND FOREIGN EXCHANGE OFFICES—Continued

Price group	Country	Destination code	Exchange office name
13 .....	Bolivia .....	LPB .....	La Paz.
13 .....	Bonaire <sup>1,3</sup> .....		
12 .....	Bosnia and Herzegovina .....	SJJ .....	Sarajevo.
15 .....	Botswana .....	GBE .....	Gabrone.
13 .....	Brazil .....	RIO .....	Rio de Janeiro.
13 .....	British Virgin Islands .....	RAD .....	Roadtown.
14 .....	Brunei Darussalam .....	BWN .....	Bandar Seri Begawan.
12 .....	Bulgaria .....	SOF .....	Sofia.
15 .....	Burkina Faso .....	OUA .....	Ouagadougou.
15 .....	Burundi .....	BJM .....	Bujumbura.
14 .....	Cambodia .....	PNH .....	Phnom Penh.
15 .....	Cameroon .....	DLA .....	Douala.
1 .....	Canada .....	See 292.47 Canadian Labeling Information.	
15 .....	Cape Verde .....	RAI .....	Praia.
13 .....	Cayman Islands .....	GCM .....	Grand Cayman.
15 .....	Central African Republic .....	BGF .....	Bangui.
15 .....	Chad .....	NDJ .....	N'Djamena.
13 .....	Chile .....	SCL .....	Santiago Avion.
14 .....	China .....	BJS .....	Beijing.
13 .....	Colombia .....	BOG .....	Bogota Aeropuerto.
15 .....	Comoros Islands <sup>1</sup> .....		
15 .....	Congo, Dem. Rep. of the .....	FIH .....	Kinshasa CTT.
15 .....	Congo, Rep. of the .....	BZV .....	Brazzaville.
5 .....	Cook Islands .....	RAR .....	Rarotonga.
13 .....	Corsica <sup>1</sup> .....		
13 .....	Costa Rica .....	SJO .....	San Jose.
15 .....	Cote d'Ivoire .....	ABJ .....	Abidjan.
12 .....	Croatia .....	ZAG .....	Zagreb.
13 .....	Cuba .....	HAV .....	Havana Avion.
13 .....	Curacao <sup>3</sup> .....	CUR .....	Willemstad.
15 .....	Cyprus .....	NIC .....	Nicosia.
12 .....	Czech Republic .....	PRG .....	Prague 120.
11 .....	Denmark .....	CPH .....	Copenhagen INC.
15 .....	Djibouti .....	JIB .....	Djibouti.
13 .....	Dominica .....	DOM .....	Roseau.
13 .....	Dominican Republic .....	SDQ .....	Santo Domingo.
13 .....	Ecuador .....	UIO .....	Quito.
15 .....	Egypt .....	CAI .....	Cairo Int'l Airport.
13 .....	El Salvador .....	SAL .....	San Salvador.
15 .....	Equatorial Guinea .....	SSG .....	Malbo.
15 .....	Eritrea .....	ASM .....	Asmara.
12 .....	Estonia .....	TLL .....	Tallinn.
15 .....	Ethiopia .....	ADD .....	Addis Ababa.
13 .....	Falkland Islands <sup>1</sup> .....		
12 .....	Faroe Islands <sup>1</sup> .....		
14 .....	Fiji .....	NAN .....	Nadi.
11 .....	Finland .....	HEL .....	Helsinki.
5 .....	France .....	CDG .....	Roissy CI.
13 .....	French Guiana .....	CAY .....	Cayenne.
14 .....	French Polynesia .....	FAA .....	PPT Centre Traitement Courier Air.
15 .....	Gabon .....	LBV .....	Libreville.
15 .....	Gambia .....	BJL .....	Banjul.
15 .....	Georgia, Republic of .....	TBS .....	Tbilisi.
4 .....	Germany .....	FRA .....	Frankfurt/M.
15 .....	Ghana .....	ACC .....	Accra.
11 .....	Gibraltar .....	GIB .....	Gibraltar.
3 .....	Great Britain (includes England, Scotland, Wales, Northern Ireland, Guernsey, Jersey, Alderney, Sark, and The Isle of Man).	LON .....	Great Britain.
11 .....	Greece .....	ATH .....	Athens.
11 .....	Greenland <sup>1</sup> .....		
13 .....	Grenada .....	GND .....	St. George's.
13 .....	Guadeloupe .....	PTP .....	Pointe-a-Pitre.
13 .....	Guatemala .....	GUA .....	Guatemala.
15 .....	Guinea .....	CKY .....	Conakry.
15 .....	Guinea-Bissau .....	OXB .....	Bissau.
13 .....	Guyana .....	GEO .....	Georgetown.
13 .....	Haiti .....	PAP .....	Port-au-Prince.
13 .....	Honduras .....	TGU .....	Tegucigalpa.

## IPA COUNTRY PRICE GROUPS AND FOREIGN EXCHANGE OFFICES—Continued

Price group	Country	Destination code	Exchange office name
14	Hong Kong	HKG	Victoria.
12	Hungary	BUD	Budapest 1005.
11	Iceland	REK	Reykjavik.
15	India	DEL	Delhi Air.
14	Indonesia	JKT	Jakarta Soekarnohatta.
15	Iran	THR	Tehran.
15	Iraq	BGW	Baghdad.
11	Ireland	DUB	Dublin.
11	Israel	TLV	Tel Aviv-Yafo.
7	Italy	MIL	Milan.
13	Jamaica	KIN	Kingston.
10	Japan	NRT	Narita AP A.
15	Jordan	AMM	Amman.
15	Kazakhstan	ALA	Almaty PCI-5.
15	Kenya	NBO	Nairobi.
14	Kiribati	TRW	Tarawa.
14	Korea, Democratic People's Republic of (North) <sup>1</sup> .		
14	Korea, Republic of (South)	SEL	Seoul IPO.
15	Kuwait	KWI	Kuwait MSC.
12	Kyrgyzstan	FRU	Bichkek PI-1.
14	Laos	VTE	Vientiane.
12	Latvia	RIX	Riga OE Letters.
15	Lebanon	BEY	Beirut.
15	Lesotho	MSU	Maseru.
15	Liberia	MLW	Monrovia.
15	Libya	TIP	Tripoli.
11	Liechtenstein <sup>1</sup> .		
12	Lithuania	VNO	Vilnius.
11	Luxembourg	LUX	Luxembourg Ville.
12	Macao	MFM	Macau.
12	Macedonia	SKP	1003 SKOP JEB.
15	Madagascar	TNR	Antananarivo TRI.
15	Malawi	LBE	Limbe.
14	Malaysia	KUL	Kuala Lumpur.
15	Maldives	MLE	Male.
15	Mali	BKO	Bamako.
15	Malta	MAR	Valletta.
13	Martinique	FDF	Fort de France.
15	Mauritania	NKC	Nouakchott.
15	Mauritius	MRU	Port Louis SSR.
2	Mexico	MEX	Mexico Aereo DF.
15	Moldova	KIV	Kishinev.
11	Monaco	MCM	Monte Carlo.
14	Mongolia <sup>1</sup>	ULN	Ulaanbaatar CPO.
13	Montenegro	TGD	Montenegro Post.
15	Montserrat	MNI	Plymouth.
15	Morocco	CAS	Casablanca CCI.
15	Mozambique	MPM	CPI Maputo.
15	Namibia	WDH	Windhoek.
14	Nauru	INU	Nauru.
14	Nepal	KTM	Kathmandu.
8	Netherlands	AMS	Amsterdam EXP.
13	Netherlands Antilles <sup>1 3</sup> .		
14	New Caledonia	NOU	Noumea CTC.
11	New Zealand	AKL	Auckland.
13	Nicaragua	MGA	Managua.
15	Niger	NIM	Niamey CNTLC.
15	Nigeria	LOS	Lagos.
11	Norway	OSL	Oslo Letter Centre.
15	Oman	MCT	Muscat.
15	Pakistan	ISB	Islamabad IM.
13	Panama	PTY	Panama City.
14	Papua New Guinea	BOR	Boroko.
13	Paraguay	ASU	Asuncion.
13	Peru	LIM	Lima Transito.
14	Philippines	MNL	Manila.
14	Pitcairn Island <sup>1</sup> .		
12	Poland	WAW	Warsaw Wer.
11	Portugal	LIS	Lisbon Province.
15	Qatar	DOH	Doha.
15	Reunion	RUN	St. Denis.

## IPA COUNTRY PRICE GROUPS AND FOREIGN EXCHANGE OFFICES—Continued

Price group	Country	Destination code	Exchange office name
12	Romania	BUH	Bucuresti C.
12	Russia	MOW	Moscow PCI-1.
15	Rwanda	KGL	Kigali.
13	Saba <sup>1,3</sup>		
13	Saint Christopher (St. Kitts) and Nevis	SKB	Basseterre.
13	Saint Eustatius <sup>1,3</sup>		
13	Saint Helena <sup>1</sup>		
13	Saint Lucia	SLU	Castries.
13	Saint Maarten <sup>3</sup>	SXM	Philipsburg.
13	Saint Pierre and Miquelon <sup>1</sup>		
13	Saint Vincent and The Grenadines	KTN	Kingstown.
11	San Marino <sup>1</sup>		
12	Sao Tome and Principe <sup>1</sup>		
15	Saudi Arabia	DMM	Dammam Central Post.
15	Senegal	DKR	Dakar Centre de Tri Postal.
12	Serbia, Republic of	BEG	Belgrad C 11003 Letters.
15	Seychelles	SEZ	Victoria Seychelles Post Office.
15	Sierra Leone	FNA	Freetown.
14	Singapore	SIN	Singapore.
12	Slovak Republic (Slovakia)	BTS	Bratislava 090.
12	Slovenia	LJU	Ljubljana 1003.
14	Solomon Islands	HIR	Honiara.
15	Somalia	MGQ	Mogadishu.
15	South Africa	JNB	Johannesburg.
11	Spain	MAD	Madrid Airport.
15	Sri Lanka	CMB	Colombo.
15	Sudan	KRT	Khartoum.
13	Suriname	PBM	Paramaribo.
15	Swaziland	MTS	Manzini.
11	Sweden	STO	Stockholm Flug.
6	Switzerland	ZRH	Zurich 1.
15	Syria	DAM	Damascus.
14	Taiwan	TPE	Taipei.
15	Tajikistan	DYU	Dushanbe.
15	Tanzania	DAR	Dar es Salaam.
14	Thailand	BKK	Suvarnabhumi Mail Centre.
15	Togo	LFW	Lome.
14	Tonga	TBU	Nukualofa.
13	Trinidad and Tobago	POS	Port of Spain.
15	Tristan da Cunha <sup>1</sup>		
15	Tunisia	TUN	Tunis.
12	Turkey	IST	Istanbul Uluslararasi Posta Isleme.
12	Turkmenistan	ASB	Achgabat PI-1.
13	Turks and Caicos Islands	GDT	Grand Turk.
14	Tuvalu <sup>1</sup>		
15	Uganda	KLA	Kampala.
15	Ukraine	IEV	Kiev PI-1.
15	United Arab Emirates	DXB	Dubai.
13	Uruguay	MVD	Montevideo.
15	Uzbekistan	TAS	Tashkent.
14	Vanuatu	VLI	Port Vila.
11	Vatican City	VAT	Vatican City.
13	Venezuela	CCS	Caracas.
14	Vietnam	SGN	Ho Chi Minh Ville.
14	Wallis and Futuna Islands <sup>1</sup>		
14	Western Samoa	APW	Apia.
15	Yemen	SAH	Sanaa.
15	Zambia	LUN	Lusaka Airmail.
15	Zimbabwe	HRE	Harare CSO.

## Footnotes:

<sup>1</sup> Direct country sacks are not made to these destinations. Prepare direct country packages and include in mixed direct country sacks labeled to the assigned U.S. exchange office listed in 292.462.

<sup>2</sup> At the mailer's option, a finer sortation for IPA items addressed to Australia may be used. If this option is chosen, items addressed with postal codes beginning with 0, 1, 2, 4, and 9 and uncoded mail should be sorted and packaged to Sydney. Direct country sacks should be tagged to Sydney as well. Both the three-letter exchange office code, "SYD," and the country name, Australia, should be entered in the "TO" block of Tag 178. Items addressed with postal codes beginning with 3, 5, 6, 7, and 8 should be sorted and packaged to Melbourne. Direct country sacks should be tagged to Melbourne as well. Both the three-letter exchange office code, "MEL," and the country name, Australia, should be entered in the "TO" block of Tag 178.

<sup>3</sup> Netherlands Antilles includes Bonaire, Curacao, Saba, St. Eustatius, and St. Maarten.

\* \* \* \* \*

**292.453 Worldwide Nonpresort Mail—Bundles**

IPA mail paid at the worldwide nonpresort price must be made into bundles as defined in 292.44. Letters and flats must be bundled separately, although nonidentical pieces may be commingled within each of these categories. Pieces that cannot be bundled because of their physical characteristics must be placed loose in the sack and do not require labeling (facing slips).

**292.46 Sacking Requirements****292.461 Direct Country Sack (5 Pounds or More)**

The following standards apply:

a. *General.* When there are 5 pounds or more of mail addressed to the same country, the mail must be enclosed in a Direct Country Sack. All types of mail, including letter-size bundles, flat-size bundles, and loose items, can be commingled in the same sack for each destination and counted toward the 5-pound minimum. The maximum weight

of the sack and contents must not exceed 66 pounds.

b. *Direct Country Sack Tags.* Direct country sacks must be labeled with PS Tag 155, *Surface Airlift Mail*, showing the destination country. The mailer must also specify the price group on the back of PS Tag 155.

c. *Direct Country Sack Label.* The sack label must be completed as follows. (See Exhibit 292.462 for list of U.S. International Exchange Offices.)

Line 1: Appropriate U.S. Exchange Office and Routing Code

Line 2: Contents—DRX COUNTRY

Line 3: Mailer, Mailer Location

*Example:*

ISC NEW YORK NY 003

IPA—DRX COUNTRY

ABC STORE, ALBANY, NY

**292.462 Mixed Country Sacks (5 Pounds or More—ISC Drop Shipment Only)**

The following standards apply:

a. *General.* When mail is prepared under the ISC drop shipment option, direct country bundles destined to a specific country that cannot be made up

in direct country sacks must be prepared in a mixed country sack. A mixed country sack must be prepared for each price group. Only countries in price groups 11 through 15 are eligible for this price. The maximum weight of the sack and the contents must not exceed 66 pounds.

b. *Mixed Country Sack Tags.* Mixed country sacks must be labeled with PS Tag 155, *Surface Airlift Mail*, which identifies the mail to ensure it receives priority handling. The mailer must specify the price group on the back of PS Tag 155.

c. *Mixed Country Sack Label.* The sack label must be completed as follows.

(See Exhibit 292.462 for list of U.S. International Exchange Offices.)

Line 1: Appropriate U.S. Exchange Office and Routing Code

Line 2: Contents—DRX MIXED

Line 3: Mailer, Mailer Location

*Example:*

ISC NEW YORK NY 003

IPA—DRX MIXED

ABC STORE, ALBANY NY

Exhibit 292.462

**LABELING OF IPA MAIL TO POSTAL SERVICE EXCHANGE OFFICES**

IPA acceptance office 3-digit ZIP code prefix	U.S. exchange office and routing code for line 1
004–005, 010–089, 100–268, 270–297, 400–418, 420–427, 470–471, 476–477 .....	ISC NEW YORK NY 003.
006–009, 298–339, 341–342, 344, 346–347, 349–397, 399 .....	ISC MIAMI FL 33112.
424, 430–469, 478–516, 520–528, 530–531, 534–535, 537–567, 570–588, 600–620, 622–631, 633–641, 644–658, 660–662, 664–681, 683–693, 700–708, 710–799, 885.	ISC CHICAGO IL 60290.
590–599, 821, 832–838, 970–986, 970–999 .....	AMC SEATTLE WA 980.
800–816, 820, 822–831, 840–847, 893–898, 937–961 .....	ISC SAN FRANCISCO CA 94013.
850, 852–853, 855–857, 859–860, 863–865, 870–875, 877–884, 889–891, 900–908, 910–928, 930–936 .....	ISC LOS ANGELES CA 900.
967–969 .....	P&DC HONOLULU HI 967.

**292.463 Worldwide Nonpresort Mail Sacks**

The following standards apply:

a. *General.* The working bundles of mixed country mail and loose items must be enclosed in sacks unless other equipment is specified by the acceptance office. Nonpresorted letter-size mail may be presented in trays if authorized by the acceptance office. The maximum weight of the sack, or tray, and the contents must not exceed 66 pounds.

**Note:** Working bundles of mixed country mail cannot be enclosed in mixed country sacks.

b. *Worldwide Nonpresort Sack Tags.* Sack tags for worldwide nonpresort sacks must be labeled with PS Tag 155, *Surface Airlift Mail* that identifies the mail to ensure it receives priority handling. The mailer must specify

“WW” (worldwide) on the back of PS Tag 155.

c. *Worldwide Nonpresort Mail Sack Label.* The sack label must be completed as follows: (See Exhibit 292.462 for list of U.S. International Exchange Offices.)

Line 1: Appropriate U.S. Exchange Office and Routing Code

Line 2: Contents WKG

Line 3: Mailer, Mailer Location

*Example:*

ISC MIAMI FL 33112

IPA—WKG

ABC COMPANY, MIAMI FL

**292.47 Mail Preparation for Canada**

Letter-size, flat-size, and package-size items must be prepared in separate containers. To qualify for the presort price, the same eligibility requirements for full service (see 292.232), or ISC drop shipment (see 292.233) apply. If the total mailing contains less than 5

pounds of mail for Canada, then the mail only qualifies for the worldwide nonpresort price but may be included with mail for other countries. Mailings that only contain worldwide nonpresort mail for Canada (50 pound minimum) are prepared under 292.453 and 292.463. The preparation requirements of presorted mail to Canada are as follows.

a. *Letter-Size and Flat-Size Mail.*

Letter-size items are prepared in letter trays, either 1-foot or 2-foot, depending on volume. Flat-size items are prepared in flat trays. All items must be faced in the same direction, and all trays must be full enough to keep the mail from mixing during transportation. Do not prepare the content of the tray in bundles. Letter-size and flat-size trays must be sleeved or covered and secured with strapping. The mailer must

identify each tray label to show the destination in Canada, content and the dispatching U.S. international exchange office in the following format: See Exhibit 292.47 for Canadian labeling information.

Line 1: Canadian Destination, U.S. Exchange Office Code

Line 2: Contents

Line 3: Mailer, Mailer Location

*Example:*  
MONTREAL QC FWD 003  
IPA  
ABC COMPANY, NEW YORK NY

In addition, the mailer must complete PS Tag 115, *International Priority Airmail*. Write "Canada" on the reverse and tape the tag to the tray sleeve. All trays must be banded.

b. *Packages*. Items that cannot be prepared in trays because of their size or shape must be placed loose in sacks. Mailers must complete PS Tag 115, *International Priority Airmail*. Write "Canada" on the reverse side of the tag and label. In addition, mailers must also attach a completed PS Tag 178, *Airmail Bag Label*.

Exhibit 292.47

#### CANADIAN LABELING INFORMATION

Origin ZIP code	Exchange office	Canadian destination	U.S. exchange office code
004–005, 010–089, 100–268, 270–297, 400–418, 420–427, 470–471, 476–477 .....	JFK .....	MONTREAL QC FWD	003
298–339, 341–342, 344, 346–347, 349–397, 399, 723 .....	MIA .....	MONTREAL QC FWD	33112
430–469, 472–475, 478–516, 520–528, 530–567, 570–588, 600–631, 633–641, 644–658, 660–662, 664–681, 683–693, 700–708, 710–722, 724–816, 822–831, 840–847, 870–885, 893, 898.	ORD .....	TORONTO ON FWD	60290
590–599, 821, 832–838, 970–999 .....	SEA .....	VANCOUVER BC FWD.	98158
820, 894–895, 937–961 .....	SFO .....	VANCOUVER BC FWD.	94013
850, 852–853, 855–857, 859–860, 863–865, 889–891, 900–908, 910–928, 930–936 .....	LAX .....	VANCOUVER BC FWD.	90899
967–969 .....	HNL .....	VANCOUVER BC FWD.	96820

### 292.5 Enter and Deposit

#### 292.51 Separation by Price Group

The mailer must specify the price group on the back of PS Tag 115, *International Priority Airmail*, with (e.g., "1" for Canada, and "WW" for Worldwide nonpresort), and must physically separate the sacks by price group at the time of mailing.

#### 292.52 Full Service

Mailings must be deposited at a Post Office facility where bulk mail is accepted and the mailer holds an advance deposit account or postage meter license.

#### 292.53 Drop Shipment

To qualify for the drop shipment price, mailers must present the mail to one of the locations in 292.531. The mailer must pay postage at the drop shipment location either through an advance deposit account or postage meter license at the serving Post Office facility. As an alternative, mailers who are participating in the Plant-Verified Drop Shipment (PVDS) program may have the mail verified, accepted, and paid for at the mailers plant or at the origin Post Office facility serving the mailers plant if authorized under DMM 705. Plant-verified drop shipment mail must be transported by the mailer to the drop shipment location and the mail must be accompanied by PS Form 8125,

*Plant-Verified Drop Shipment (PVDS) Verification and Clearance.*

#### 292.531 Drop Shipment Locations

Drop shipments are available through the following offices:

*New York:* John F Kennedy Airport Mail Ctr, US Postal Service, John F Kennedy International Airport Bldg 250, Jamaica, NY 11430–9998.

*Florida:* Miami International Service Ctr\*, US Postal Service, 11698 NW 25th St., Miami, FL 33112–9997.

Miami Processing and Distribution Ctr, US Postal Service, 2200 NW 72nd Ave., Miami, FL 33152–9997.

*Texas:* North Texas P&DC, US Postal Service, 951 W Bethel Rd, Coppell, TX 75099–8811.

*Illinois:* JT Weeker International Service Center, US Postal Service, O'Hare International Airport, 514 Express Center Dr., Chicago, IL 60688–9998.

*California:* Los Angeles ISC, US Postal Service, 5800 W Century Blvd., Los Angeles, CA 90009–9998.

San Francisco ISC, US Postal Service, 2650 Bayshore Blvd., Daly City, CA 94013–1631.

\* Only plant-verified mail is transported to these facilities by the mailer.

[Delete current 293 in its entirety and replace to read as follows:]

### 293 International Surface Air Lift (ISAL) Service

#### 293.1 Description

##### 293.11 General

International Surface Air Lift (ISAL) is a bulk mailing system that provides fast, economical international delivery of First-Class Mail International items. The cost is lower than First-Class Mail International service. ISAL shipments are flown to the foreign destinations and entered into that country's surface or nonpriority mail system for delivery. Separate prices are provided for International Service Center (ISC) drop shipments, presorted mail, and nonpresorted mail. Volume incentives are available through customized agreements.

##### 293.12 ISAL M-Bags

ISAL M-bags (direct sacks of printed matter to one addressee) may be entered in conjunction with an ISAL mailing, are subject to the provisions of 260, and may be sent to all destination countries that are referenced in Exhibit 293.452. When using this method of mail preparation, the sender must complete PS Tag 155, *Surface Air Lift Mail*, and PS Tag 158, *M-Bag Addressee Tag*. Tags must be securely attached to the neck of the sack.

**293.2 Eligibility****293.21 Qualifying Mailpieces**

Any First-Class Mail International mailpiece that meets the characteristics defined in 141.5 qualifies to be mailed as ISAL. Mailpieces do not have to be of the same size and weight. Any item sent by ISAL must conform to the weight and size limits for First-Class Mail International postcards, letters, large envelopes (flats), and packages (small packets) as described in 240.

**293.22 Availability**

ISAL service is available to all foreign countries, as listed in Exhibit 293.452, which shows the price group assigned to each country.

**293.23 Minimum Quantity Requirements****293.231 Minimum Quantity**

All mailings must meet a minimum weight quantity of 50 pounds. To achieve the 50-pound minimum, mailings may include a combination of presort mail, worldwide nonpresort mail, or M-bags.

**293.232 Presort Eligibility—Full Service**

Only direct country sacks containing a minimum of 5 pounds in each sack qualifies for the presort price. All remaining mail must be prepared and paid at the worldwide nonpresort price.

**293.233 Presort Eligibility—ISC Drop Shipment**

Only direct country sacks and mixed country sacks containing a minimum of 5 pounds in each sack qualifies for the presort price. Price groups containing less than 5 pounds must be prepared and paid at the worldwide nonpresort price.

**293.24 Dutiable Items**

Dutiable items may be sent in accordance with the applicable rules in this subchapter for those classes of mail. Priority Mail International items, either ordinary or insured, may not be mailed as ISAL.

**293.25 Customs Forms Requirements**

See 123 for customs forms requirements.

**293.26 Extra Services**

Extra services are not available for items sent by ISAL.

**293.3 Prices and Postage Payment Methods****293.31 Prices****293.311 General**

ISAL service has two price options: a presort option with 15 price groups and a worldwide nonpresort option (293.311a). Both offer full service prices (293.311b) for mail deposited at offices other than the drop shipment offices listed in 293.531; and drop shipment prices (293.311c) for mail deposited at one of the drop shipment offices. The per-piece price and per-pound price are shown in Exhibit 293.311a. The per-piece price applies to each piece regardless of its weight. The per-pound price applies to the net weight (gross weight minus tare weight of sack or tray) of the mail for the specific price group. Fractions of a pound are rounded to the next whole pound for postage calculation.

Exhibit 293.311a

**INTERNATIONAL SURFACE AIR LIFT (ISAL) PRICES**

Direct country sacks				Mixed country sacks		
Price group	Per piece	Full service per lb.	ISC drop shipment per lb.	Per piece	Full service per lb.	ISC drop shipment per lb.
1 .....	\$0.43	\$3.85	\$2.85	.....	.....	.....
2 .....	0.12	4.86	3.86	.....	.....	.....
3 .....	0.43	4.49	3.49	.....	.....	.....
4 .....	0.43	4.59	3.59	.....	.....	.....
5 .....	0.43	4.56	3.56	.....	.....	.....
6 .....	0.43	4.45	3.45	.....	.....	.....
7 .....	0.44	4.66	3.66	.....	.....	.....
8 .....	0.43	4.45	3.45	.....	.....	.....
9 .....	0.31	4.76	3.76	.....	.....	.....
10 .....	0.46	4.67	3.67	.....	.....	.....
11 .....	0.43	4.49	3.49	\$0.46	.....	\$3.67
12 .....	0.15	5.45	4.45	0.16	.....	4.68
13 .....	0.15	5.55	4.55	0.16	.....	4.78
14 .....	0.15	5.45	4.45	0.16	.....	4.68
15 .....	0.12	6.60	5.60	0.13	.....	5.88

**WORLDWIDE NONPRESORT SACKS**

Price group	Per piece	Full service per lb.	ISC drop shipment per lb.
n/a .....	\$0.51	\$7.63	\$6.47

Exhibit 293.311b

INTERNATIONAL SURFACE AIR LIFT  
(ISAL) M-BAG—FULL SERVICE

Price group	Full service per lb.
1 .....	\$1.60
2 .....	1.70
3 .....	2.00
4 .....	2.00
5 .....	2.00
6 .....	2.00

INTERNATIONAL SURFACE AIR LIFT  
(ISAL) M-BAG—FULL SERVICE—  
Continued

Price group	Full service per lb.
7 .....	2.00
8 .....	2.00
9 .....	3.00
10 .....	2.80
11 .....	2.03
12 .....	2.35
13 .....	2.35

INTERNATIONAL SURFACE AIR LIFT  
(ISAL) M-BAG—FULL SERVICE—  
Continued

Price group	Full service per lb.
14 .....	2.60
15 .....	3.25

Note: Full Service M-bags are subject to the minimum price for 11 lbs.

Exhibit 293.311c

## INTERNATIONAL SURFACE AIR LIFT (ISAL) M-BAG—ISC DROP SHIPMENT

Price group	5 lbs.	6 lbs.	7 lbs.	8 lbs.	9 lbs.	10 lbs.	11 lbs.	Each additional pound
1 .....	\$15.90	\$16.00	\$16.10	\$16.20	\$16.30	\$16.40	\$16.50	\$1.50
2 .....	14.30	14.85	15.40	15.95	16.50	17.05	17.60	1.60
3 .....	11.45	12.75	14.05	15.35	16.65	17.95	19.25	1.75
4 .....	11.45	12.75	14.05	15.35	16.65	17.95	19.25	1.75
5 .....	11.45	12.75	14.05	15.35	16.65	17.95	19.25	1.75
6 .....	11.45	12.75	14.05	15.35	16.65	17.95	19.25	1.75
7 .....	11.45	12.75	14.05	15.35	16.65	17.95	19.25	1.75
8 .....	11.45	12.75	14.05	15.35	16.65	17.95	19.25	1.75
9 .....	18.25	20.25	22.25	24.25	26.25	28.25	30.25	2.75
10 .....	16.25	18.40	20.55	22.70	24.85	27.00	29.15	2.65
11 .....	11.65	12.99	14.33	15.67	17.01	18.35	19.69	1.79
12 .....	12.90	14.60	16.30	18.00	19.70	21.40	23.10	2.10
13 .....	14.40	15.85	17.30	18.75	20.20	21.65	23.10	2.10
14 .....	12.05	14.35	16.65	18.95	21.25	23.55	25.85	2.35
15 .....	16.20	19.00	21.80	24.60	27.40	30.20	33.00	3.00

Note: ISC Drop Shipment M-bags are subject to the minimum price for 5 lbs.

**293.32 Computation of Postage**

Postage is computed on PS Form 3700, *Postage Statement—International Mail*.

**293.321 Computing Worldwide Nonpresort Prices**

To compute postage at the worldwide nonpresort price multiply the number of pieces in the mailing by the applicable per-piece price, multiply the net weight (in whole pounds) of the entire mailing by the applicable per-pound price, and then add the two totals together.

**293.322 Computing Presort Prices**

To compute postage at the presorted price, first multiply the number of pieces in the mailing destined for countries in a specific price group by the appropriate per-piece price, then multiply the net weight (in whole pounds) of those pieces by the corresponding per-pound price, and then add the two totals together.

**293.33 Postage Payment Methods****293.331 General**

Postage must be paid by postage meter, permit imprint, or precanceled stamps (see DMM 604).

**293.332 Postage Meter**

Payments made by postage meter are subject to the following standards:

a. *Piece Price*. The applicable per piece postage shown in 293.311a must be affixed to each mailpiece when paying with a meter. Mailers who have an ICM agreement must affix the applicable per piece postage as set forth in their ICM agreement.

b. *Pound Price*. Postage for the pound price portion must be paid either by meter stamp(s) attached to the postage statement or from the mailer's authorized permit imprint advance deposit account.

c. *Postage Endorsement*. Each piece must be legibly endorsed with the words "INTERNATIONAL SURFACE AIR LIFT" or "ISAL".

d. *Specifications for Endorsement*. The endorsement required in 293.332c must appear on the address side of each piece and must be applied by a printing press, hand stamp, or other similar printing device. It must be printed above the name of the addressee and to the left or below the postage, or it may be printed adjacent to the meter stamp in either the postal inscription slug area or ad plate area. If the postal endorsement appears in the ad plate area, no other information may be

printed in the ad plate. The endorsement may not be typewritten or hand-drawn. The endorsement is not considered adequate if it is included as part of a decorative design or advertisement.

e. *Unmarked Pieces*. Unmarked pieces lacking the postage endorsement are subject to the First-Class Mail International single-piece price.

f. *Drop Shipment of Metered Mail*. Mailers who want to enter metered ISAL mail at a Post Office facility other than where the meter is licensed must obtain a drop shipment authorization. To obtain an authorization, the mailer must submit a written request to the postmaster at the office where the mail will be entered (see DMM 705).

**293.333 Precanceled Stamps**

Payments made by precanceled stamps are subject to the following standards:

a. *Piece Price*. The same denomination of stamp must be affixed to every piece in the mailing.

b. *Pound Price*. Additional postage is paid at the time of mailing by advance deposit account or meter stamp affixed to the back of the accompanying postage statement.

c. *Postage Endorsement.* Each piece must be legibly endorsed with the words "INTERNATIONAL SURFACE AIR LIFT" or "ISAL".

d. *Specifications for Endorsement.* The endorsement required in 293.333c must appear on the address side of each piece and must be applied by a printing press, hand stamp, or other similar printing device. It must be printed above the name of the addressee and to the left or below the postage, or it may be printed adjacent to the precanceled stamp. The endorsement may not be typewritten or hand-drawn. The endorsement is not considered adequate if it is included as part of a decorative design or advertisement.

e. *Unmarked Pieces.* Unmarked pieces lacking the postage endorsement are subject to the First-Class Mail International single-piece price.

#### 293.334 Permit Imprint

Mailers may use a permit imprint for mailings that contain identical weight pieces. Any of the permit imprints shown in Exhibit 152.44 are acceptable. Postage is calculated as described in 293.32 and is deducted from the mailer's advance deposit account. Permit imprints must not denote bulk mail, nonprofit, or other domestic or special mail. Mailers may use permit imprint with nonidentical weight pieces only if authorized to use postage mailing systems under DMM 705.

#### 293.4 Mail Preparation

##### 293.41 Addressing

International Surface Air Lift is subject to the addressing requirements contained in 122.

*Exception—Canada:* International Surface Air Lift items destined for Canada must have the applicable alphanumeric postcode included in the delivery address. See 122.1k for the address formatting requirements that generally apply to mailpieces sent to Canada.

*Exception—Direct Country Sacks:* International Surface Air Lift in direct country sacks (see 293.451) is not subject to the interline addressing requirement that is specified in 122.1d. At the sender's risk, the English

translation of the destination Post Office or city name may be omitted from printed addresses that are in Russian, Greek, Arabic, Hebrew, Cyrillic, Japanese, or Chinese characters. An English translation of the country name (e.g., Japan) is still required on the individual mailpieces.

#### 293.42 Marking

##### 293.421 Letter-Size and Flat-Size Mailpieces

The sender should mark "INTERNATIONAL SURFACE AIR LIFT" or "ISAL" on the address side of each piece. Use of bordered airmail envelopes is prohibited.

##### 293.422 Packages (Small Packets)

Items that might be mistaken for another class of mail because of their size, weight, or appearance should be marked "LETTER-POST" on the address side.

#### 293.43 Sealing

Mail that is sent via ISAL service may be sealed at the sender's option. See 244.4 for the packaging methods that are applicable to all First-Class Mail International items.

*Exception:* For direct country sacks only, First-Class Mail International folded mailpieces, without envelopes, are permitted provided one of the following methods is used:

1. All of the open sides are secured with tape, tabs, or wafer seals of sufficient quantity and strength to prevent the mailpieces from opening or being damaged during postal handling.

2. The mailpieces meet the physical standards and tabbing requirements in DMM 201.3.

##### 293.44 Physical Characteristics and Requirements for All Bundles

The following standards apply:

a. *Thickness.* Bundles of letter-size mail must be no thicker than approximately a handful of mail (4 to 6 inches thick). Bundles of flat-size mail may be thicker than 6 inches but must not weigh more than 11 pounds.

b. *Securing Bundles.* Each bundle must be securely tied to withstand normal transit. Placing rubber bands around the length and then the girth is

the preferred method of securing bundles of letter-size mail. Plastic strapping placed around the length and then the girth is the preferred method of securing bundles of flat-size mail.

c. *Separation of Bundles.* Letter-size and flat-size mail must be bundled separately.

d. *Facing of Piece.* All pieces in bundles must be faced in the same direction.

#### 293.45 Sortation

##### 293.451 Presort Mailings—General

Follow these steps when preparing ISAL presort mail:

a. *Full Service.* For presort mailings, all mail addressed to an individual country that contains 5 pounds or more must be sorted into direct country bundles and sacked in direct country sacks. Mail that cannot be made up into direct country sacks must be prepared and entered at the worldwide nonpresort prices.

b. *ISC Drop Shipment.* For presort mailings, all mail addressed to an individual country that contains 5 pounds or more must be sorted into direct country bundles and sacked in direct country sacks. Next, all mail addressed to individual countries within a single price group containing 5 pounds or more must be bundled separately and sacked in mixed country sacks. Mail that ultimately cannot be made up into direct country sacks or mixed country sacks must be prepared and entered at the worldwide nonpresort prices.

##### 293.452 Presorted Mail—Direct Country Bundle Label

A label (facing slip) for direct country bundles prepared for mixed country sacks must be completed and placed on the address side of the top piece of each bundle showing the country of destination. The pressure-sensitive labels and optional endorsement lines used domestically for presort mail are prohibited for ISAL.

Exhibit 293.452

#### ISAL Country Price Groups and Foreign Exchange Offices

#### INTERNATIONAL SURFACE AIR LIFT (ISAL) SERVICE NETWORK COUNTRIES AND PRICE GROUPS

Country	City	3-Letter exchange office code	Price group
Argentina .....	Buenos Aires .....	BUE .....	13
Australia .....	Sydney .....	SYD .....	19
Austria .....	Vienna .....	VIE .....	11
Belgium .....	Brussels .....	BRU .....	11
Belize .....	Belize City .....	BZE .....	13

## INTERNATIONAL SURFACE AIR LIFT (ISAL) SERVICE NETWORK COUNTRIES AND PRICE GROUPS—Continued

Country	City	3-Letter exchange office code	Price group
Bolivia .....	La Paz .....	LPB .....	13
Brazil .....	Rio de Janeiro .....	RIO .....	13
Canada .....	See 292.47 .....	.....	1
Chile .....	Santiago .....	SCL .....	13
China .....	Beijing (Peking) .....	PEK .....	14
Colombia .....	Bogota .....	BOG .....	13
Costa Rica .....	San Jose .....	SJO .....	13
Czech Republic .....	Prague .....	PRG .....	12
Denmark .....	Copenhagen .....	CPH .....	11
Dominican Republic .....	Santo Domingo .....	SDQ .....	13
Ecuador .....	Guayaquil .....	GYE .....	13
Egypt .....	Cairo .....	CAI .....	15
El Salvador .....	San Salvador .....	SAL .....	13
Finland .....	Helsinki .....	HEL .....	11
France .....	Paris .....	PAR .....	5
Germany .....	Frankfurt .....	FRA .....	4
Great Britain .....	London .....	LON .....	3
Greece .....	Athens .....	ATH .....	11
Guatemala .....	Guatemala City .....	GUA .....	13
Guyana .....	Georgetown .....	GEO .....	13
Haiti .....	Port-au-Prince .....	PAP .....	13
Honduras .....	Tegucigalpa .....	TGU .....	13
Hong Kong .....	Hong Kong .....	HKG .....	14
Hungary .....	Budapest .....	BUD .....	12
India .....	Mumbai .....	BOM .....	15
Indonesia .....	Jakarta .....	JKT .....	14
Ireland .....	Dublin .....	DUB .....	11
Israel .....	Tel Aviv .....	TLV .....	11
Italy .....	Rome .....	ROM .....	7
Japan <sup>1</sup> .....	Osaka Int'l .....	OSA .....	10
.....	Tokyo .....	TYO .....	10
Jordan .....	Amman .....	AMM .....	15
Kenya .....	Nairobi .....	NBO .....	15
Korea, Rep. of (South) .....	Seoul .....	SEL .....	14
Mexico .....	Mexico City .....	MEX .....	2
Netherlands .....	Amsterdam .....	AMS .....	8
Netherlands Antilles .....	Curacao .....	CUR .....	13
New Zealand .....	Auckland .....	AKL .....	11
Nigeria .....	Lagos .....	LOS .....	15
Norway .....	Oslo .....	OSL .....	11
Panama .....	Panama City .....	PTY .....	13
Peru .....	Lima .....	LIM .....	13
Philippines .....	Manila .....	MNL .....	14
Poland .....	Warsaw .....	WAW .....	12
Portugal .....	Lisbon .....	LIS .....	11
Romania .....	Bucharest .....	BUH .....	12
Russia .....	Moscow .....	MOW .....	12
Saudi Arabia .....	Dhahran .....	DHA .....	15
Singapore .....	Singapore .....	SIN .....	14
South Africa .....	Johannesburg .....	JNB .....	15
Spain <sup>2</sup> .....	Madrid .....	MAD .....	11
Sweden .....	Stockholm .....	STO .....	11
Switzerland .....	Basel .....	BSL .....	6
Taiwan .....	Taipei .....	TPE .....	14
Thailand .....	Bangkok .....	BKK .....	14
Trinidad and Tobago .....	Port of Spain .....	POS .....	13
Turkey .....	Istanbul .....	IST .....	12
United Arab Emirates .....	Dubai .....	DXB .....	15
Uruguay .....	Montevideo .....	MVD .....	13
Venezuela .....	Caracas .....	CCS .....	13

<sup>1</sup> To expedite handling, Japan Post has requested that U.S. shippers make the following optional separation of their ISAL mail:

—Mail destined for locations in Japan with post code prefixes 52–93 should be labeled to Osaka International (OSA).

—Mail destined for all other post code prefixes should be labeled to Tokyo (TYO).

All ISAL mail that is not optionally separated as specified above should be labeled to Tokyo (TYO).

<sup>2</sup> Including the Canary Islands.

\* \* \* \* \*

**293.453 Worldwide Nonpresort Mail—General**

ISAL mail paid at the worldwide nonpresort price must be made into bundles as defined in 293.44. Letters and flats must be bundled separately, although nonidentical pieces may be commingled within each of these categories. Pieces that cannot be bundled because of their physical characteristics must be placed loose in the sack and do not require labeling (facing slips).

**293.46 Sacking Requirements****293.461 Direct Country Sack (5 Pounds or More)**

The following standards apply:

a. *General.* When there are 5 pounds or more of mail addressed to the same country the mail must be enclosed in a Direct Country Sack. All types of mail, including letter-size bundles, flat-size bundles, and loose items, can be commingled in the same sack for each destination and counted toward the 5-pound minimum. The maximum weight

of the sack and contents must not exceed 66 pounds.

b. *Direct Country Sack Tags.* Direct country sacks must be labeled with PS Tag 155, Surface Airlift Mail, showing the destination country. The mailer must also specify the price group on the back of PS Tag 155.

c. *Direct Country Sack Label.* The sack label must be completed as follows. (See Exhibit 293.462 for list of U.S. International Exchange Offices.)

Line 1: Appropriate U.S. Exchange Office and Routing Code  
Line 2: Contents—DRX  
Line 3: Mailer, Mailer Location

*Example:*

ISC NEW YORK NY 003  
ISAL—DRX COUNTRY  
ABC STORE, ALBANY NY

**293.462 Mixed Country Sacks (5 Pounds or More—ISC Drop Shipment Only)**

The following standards apply:

a. *General.* When mail is prepared under the ISC drop shipment option, direct country bundles destined to a specific country that cannot be made up

in direct country sacks must be prepared in a mixed country sack. A mixed country sack must be prepared for each price group. Only countries in price groups 11 through 15 are eligible for this price. The maximum weight of the sack and the contents must not exceed 66 pounds.

b. *Mixed Country Sack Tags.* Mixed country sacks must be labeled with PS Tag 155, *Surface Airlift Mail*, which identifies the mail to ensure it receives priority handling. The mailer must specify the price group on the back of PS Tag 155.

c. *Mixed Country Sack Label.* The sack label must be completed as follows. (See Exhibit 293.462 for list of U.S. International Exchange Offices.)

Line 1: Appropriate U.S. Exchange Office and Routing Code  
Line 2: Contents—DRX MIXED  
Line 3: Mailer, Mailer Location

*Example:*

ISC NEW YORK NY 003  
ISAL—DRX MIXED  
ABC STORE, ALBANY NY

Exhibit 293.462

**LABELING OF ISAL MAIL TO POSTAL SERVICE EXCHANGE OFFICES**

ISAL acceptance office 3-Digit ZIP code prefix	U.S. exchange office and routing code for line 1
004–005, 010–089, 100–268, 270–297, 400–418, 420–427, 470–471, 476–477 .....	ISC NEW YORK NY 003.
006–009, 298–339, 341–342, 344, 346–347, 349–397, 399 .....	ISC MIAMI FL 33112.
424, 430–469, 478–516, 520–528, 530–531, 534–535, 537–567, 570–588, 600–620, 622–631, 633–641, 644–658, 660–662, 664–681, 683–693, 700–708, 710–799, 885.	ISC CHICAGO IL 60290.
590–599, 821, 832–838, 970–986, 970–999 .....	AMC SEATTLE WA 980.
800–816, 820, 822–831, 840–847, 893–898, 937–961 .....	ISC SAN FRANCISCO CA 94013.
850, 852–853, 855–857, 859–860, 863–865, 870–875, 877–884, 889–891, 900–908, 910–928, 930–936 .....	ISC LOS ANGELES CA 900.
967–969 .....	P&DC HONOLULU HI 967.

**293.463 Worldwide Nonpresort Mail Sacks**

The following standards apply:

a. *General.* The working bundles of mixed country mail and loose items must be enclosed in sacks unless other equipment is specified by the acceptance office. Nonpresorted letter-size mail may be presented in trays if authorized by the acceptance office. The maximum weight of the sack, or tray, and the contents must not exceed 66 pounds.

**Note:** Working bundles of mixed country mail cannot be enclosed in mixed country sacks.

b. *Worldwide Nonpresort Sack Tags.* Sack tags for worldwide nonpresort sacks must be labeled with PS Tag 155, *Surface Airlift Mail*, that identifies the mail to ensure it receives priority handling. The mailer must specify

“WW” (worldwide) on the back of PS Tag 155.

c. *Worldwide Nonpresort Mail Sack Label.* The sack label must be completed as follows: (See Exhibit 293.462 for list of U.S. International Exchange Offices.)

Line 1: Appropriate U.S. Exchange Office and Routing Code  
Line 2: Contents WKG  
Line 3: Mailer, Mailer Location

*Example:*

ISC MIAMI FL 33112  
ISAL—WKG  
ABC COMPANY, MIAMI FL

**293.5 Enter and Deposit****293.51 Separation by Price Group**

The mailer must specify the price group on the back of PS Tag 155, *Surface Airlift Mail*, with (e.g., “1” for Canada, and “WW” for Worldwide nonpresort), and must physically

separate the sacks by price group at the time of mailing.

**293.52 Full Service**

Mailings must be deposited at a Post Office facility where bulk mail is accepted and the mailer holds an advance deposit account or postage meter license.

**293.53 Drop Shipment**

To qualify for the drop shipment price, mailers must present the mail to one of the locations in 293.531. The mailer must pay postage at the drop shipment location either through an advance deposit account or postage meter license at the serving Post Office facility. As an alternative, mailers who are participating in the Plant-Verified Drop Shipment (PVDS) program may have the mail verified, accepted, and paid for at the mailers plant or at the origin Post Office facility serving the

mailers plant if authorized under DMM 705. Plant-verified drop shipment mail must be transported by the mailer to the drop shipment location and the mail must be accompanied by PS Form 8125, *Plant-Verified Drop Shipment (PVDS) Verification and Clearance*.

### 293.531 Drop Shipment Locations

Drop shipments are available through the following offices:

*New York:* John F. Kennedy Airport Mail Ctr, US Postal Service, John F. Kennedy International Airport Bldg 250, Jamaica, NY 11430-9998.

*Florida:*

Miami International Service Ctr\*, US Postal Service, 11698 NW 25th St, Miami, FL 33112-9997.

Miami Processing And Distribution Ctr, US Postal Service, 2200 NW 72nd Ave, Miami, FL 33152-9997.

*Texas:* North Texas P&DC, US Postal Service, 951 W Bethell Rd, Coppell, TX 75099-8811.

*Illinois:* JT Weeker International Service Center, US Postal Service, O'Hare International Airport, 514 Express Center Dr., Chicago, IL 60688-9998.

*California:* Los Angeles ISC, US Postal Service, 21750 Arnold Center Rd, Carson, CA 90810-9998.

San Francisco ISC, US Postal Service, 2650 Bayshore Blvd., Daly City, CA 94013-1631.

\*Only plant-verified mail is transported to these facilities by the mailer.

\* \* \* \* \*

### 3 Extra Services

#### 310 Certificate of Mailing

\* \* \* \* \*

#### 313 Fees

##### 313.1 Individual Pieces

[Revise 313.1 by changing the certificate of mailing fee from \$1.10 to \$1.15 (in two places); and the Firm Mailing Book fee from \$0.40 to \$0.42.]

##### 313.2 Bulk Pieces

[Revise the table in 313.2 as follows:]

Up to 1,000 pieces .....	\$6.50
Each addition 1, 000 pieces or fraction .....	0.75
Duplicate copy .....	1.15

\* \* \* \* \*

### 330 Registered Mail

\* \* \* \* \*

### 333 Fees and Indemnity Limits

#### 333.1 Registration Fees

[Change the registry fee to \$11.50.]

\* \* \* \* \*

#### 340 Return Receipt

\* \* \* \* \*

#### 343 Fee

[Revise 343 by changing the fee to \$2.30.]

\* \* \* \* \*

#### 350 Restricted Delivery

\* \* \* \* \*

#### 353 Fee

[Revise 353 by changing the fee to \$4.50.]

\* \* \* \* \*

### Index of Countries and Localities

#### Country Conditions for Mailing

\* \* \* \* \*

[Replace the current price tables in the Individual Country Listings with the following:]

### FIRST-CLASS MAIL INTERNATIONAL LETTERS

Weight not over (oz.)	Price groups			
	1	2	3, 4, 5	6, 7, 8, 9
1 .....	\$0.75	\$0.79	\$0.98	\$0.98
2 .....	1.00	1.34	1.82	1.76
3 .....	1.25	1.89	2.66	2.54
3.5 .....	1.50	2.44	3.50	3.32
Postcards .....	0.75	0.79	0.98	0.98

### FIRST-CLASS MAIL INTERNATIONAL LARGE ENVELOPES (FLATS)

Weight not over (oz.)	Price groups			
	1	2	3, 4, 5	6, 7, 8, 9
1 .....	\$1.03	\$1.03	\$1.24	\$1.24
2 .....	1.29	1.59	2.08	2.03
3 .....	1.55	2.15	2.92	2.82
4 .....	1.81	2.71	3.76	3.61
5 .....	2.07	3.27	4.60	4.40
6 .....	2.33	3.83	5.44	5.19
7 .....	2.59	4.39	6.28	5.98
8 .....	2.85	4.95	7.12	6.77
12 .....	3.83	6.50	8.84	8.44
16 .....	4.81	8.05	10.56	10.11
20 .....	5.79	9.60	12.28	11.78
24 .....	6.77	11.15	14.00	13.45
28 .....	7.75	12.70	15.72	15.12
32 .....	8.73	14.25	17.44	16.79
36 .....	9.71	15.80	19.16	18.46
40 .....	10.69	17.35	20.88	20.13
44 .....	11.67	18.90	22.60	21.80
48 .....	12.65	20.45	24.32	23.47
52 .....	13.63	22.00	26.04	25.14
56 .....	14.61	23.55	27.76	26.81
60 .....	15.59	25.10	29.48	28.48

## FIRST-CLASS MAIL INTERNATIONAL LARGE ENVELOPES (FLATS)—Continued

Weight not over (oz.)	Price groups			
	1	2	3, 4, 5	6, 7, 8, 9
64 .....	16.57	26.65	31.20	30.15

## FIRST-CLASS MAIL INTERNATIONAL PACKAGES (SMALL PACKETS)

Weight not over (oz.)	Price groups			
	1	2	3, 4, 5	6, 7, 8, 9
1 .....	\$1.23	\$1.23	\$1.44	\$1.44
2 .....	1.49	1.79	2.28	2.23
3 .....	1.75	2.35	3.12	3.02
4 .....	2.01	2.91	3.96	3.81
5 .....	2.27	3.47	4.80	4.60
6 .....	2.53	4.03	5.64	5.39
7 .....	2.79	4.59	6.48	6.18
8 .....	3.05	5.15	7.32	6.97
12 .....	4.03	6.70	9.04	8.64
16 .....	5.01	8.25	10.76	10.31
20 .....	5.99	9.80	12.48	11.98
24 .....	6.97	11.35	14.20	13.65
28 .....	7.95	12.90	15.92	15.32
32 .....	8.93	14.45	17.64	16.99
36 .....	9.91	16.00	19.36	18.66
40 .....	10.89	17.55	21.08	20.33
44 .....	11.87	19.10	22.80	22.00
48 .....	12.85	20.65	24.52	23.67
52 .....	13.83	22.20	26.24	25.34
56 .....	14.81	23.75	27.96	27.01
60 .....	15.79	25.30	29.68	28.68
64 .....	16.77	26.85	31.40	30.35

\* \* \* \* \*

[Replace the current tables in the  
Individual Country Listings for countries

with Express Mail International

merchandise insurance with current  
fees to read as follows:]

## INSURANCE (221.3)

Insured amount not over	Fee	Insured amount not over	Fee
\$100 .....	No fee	For insurance coverage above \$2,000, add \$1.40 for each \$500 or fraction thereof, up to a maximum of \$5,000 per shipment.	
200 .....	\$0.75		
500 .....	2.15		
1,000 .....	3.55		
1,500 .....	4.95		
2,000 .....	6.35	\$5,000 max .....	\$14.75

\* \* \* \* \*

[Revise the Canada Country Listing as  
follows:]

**Canada****Insurance (320)**

Available for Priority Mail  
International parcels only (see 344.3 for  
markings).

Insured amount not over	Fee	Insured amount not over	Fee
\$50 .....	\$1.75	675 .....	8.70
100 .....	2.25		
200 .....	2.75		
300 .....	4.70		
400 .....	5.70		
500 .....	6.70		
600 .....	7.70		

[Revise all other country listings to  
which Priority Mail International parcel  
insurance is offered up to the amount  
available as follows:]

Insured amount not over	Fee	Insured amount not over	Fee
\$50 .....	\$2.50	Add \$1.00 for each additional \$100 or fraction of insurance coverage.	

Insured amount not over	Fee	Insured amount not over	Fee
100 .....	3.40		
200 .....	4.40		
300 .....	5.40		
400 .....	6.40		
500 .....	7.40	\$5,000 max .....	\$52.40

\* \* \* \* \*

[Revise the following Extra Services fees in the Individual Country Listings:]

**Registered Mail (330) Fee: \$11.50**

**Restricted Delivery (350) Fee: \$4.50**

**Return Receipt (340) Fee: \$2.30**

\* \* \* \* \*

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E9-3962 Filed 2-24-09; 8:45 am]

BILLING CODE 7710-12-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2008-0262; FRL-8398-8]

#### Spiromesifen; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for combined residues of spiromesifen in or on tomato, paste. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective February 25, 2009. Objections and requests for hearings must be received on or before April 27, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2008-0262. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at

<http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

#### FOR FURTHER INFORMATION CONTACT:

Jennifer Gaines, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number (703) 305-5967; e-mail address: [gaines.jennifer@epa.gov](mailto:gaines.jennifer@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at <http://www.regulations.gov>, you may access this **Federal Register** document

electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of EPA’s tolerance regulations at 40 CFR part 180 through the Government Printing Office’s e-CFR cite at <http://www.gpoaccess.gov/ecfr>.

###### C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2008-0262 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before April 27, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA-HQ-OPP-2008-0262, by one of the following methods:

• **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

• **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility’s normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The

Docket Facility telephone number is (703) 305-5805.

## II. Petition for Tolerance

In the **Federal Register** of December 3, 2008 (73 FR 73643) (FRL-8390-4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8F7444) by Bayer CropScience, Box 12014, 2 T.W., Alexander Dr, Research, Triangle Park, NC 27709. The petition requested that 40 CFR 180.607 be amended by increasing the tolerance for combined residues of the insecticide spiromesifen, 2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate, and its enol metabolite, 4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one, in or on tomato, paste to 0.80 parts per million (ppm). That notice referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available to the public in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

This petition is related to Bayer CropScience's application to amend its registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), for spiromesifen to decrease the preharvest interval (PHI) on tomato from 7 days to 1 day. Crop field residue data for that revised PHI indicated that the existing tolerance applicable to spiromesifen on tomato is adequate but the tolerance on tomato, paste, needed to be raised from 0.60 ppm to 0.80 ppm.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from

aggregate exposure to the pesticide chemical residue...."

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for combined residue of spiromesifen on tomato, paste at 0.80 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

On September 10, 2008 the Agency published a Final Rule (73 FR 52603, FRL-8379-8) establishing tolerances for combined residues of spiromesifen in or on corn, field, at 5.0 ppm for forage and 8.0 ppm for stover. When the Agency conducted the risk assessments in support of the September, 2008 tolerance action, it also assessed the risk resulting from the increased residues in tomato, paste which would occur from the proposed decreased PHI for spiromesifen on tomato. Specifically, in that risk assessment, EPA assumed that spiromesifen would be present in tomato, paste at 0.80 ppm. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action. Refer to the September 10, 2008 **Federal Register** document, available at <http://www.regulations.gov>, for a detailed discussion of the aggregate risk assessments and determination of safety.

Based on the risk assessments discussed in the final rule published in the **Federal Register** of September 10, 2008 (73 FR 52603, FRL-8379-8), EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to spiromesifen residues.

## IV. Other Considerations

### A. Analytical Enforcement Methodology

Adequate enforcement methodology—high-performance liquid chromatography (HPLC)/triple stage quadrupole mass spectrometry (MS/MS) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

### B. International Residue Limits

There are no CODEX MRLs (maximum residue limits) established for spiromesifen on tomato, paste commodities.

## V. Conclusion

Therefore, tolerances are established for combined residues of spiromesifen, 2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate, and its enol metabolite, 4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one, in or on tomato, paste at 0.80 ppm.

## VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments,

on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

## VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 9, 2009.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

### PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.607 is amended by revising the entry for the commodity

"tomato, paste" in the table in paragraph (a)(1) to read as follows:

#### § 180.607 Spiromesifen; tolerances for residues.

(a) \* \* \*

(1) \* \* \*

Commodity	Parts per million
* * *	* * *
Tomato, paste .....	0.80
* * *	* * *

[FR Doc. E9-4058 Filed 2-24-09; 8:45 am]

**BILLING CODE 6560-50-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 09100091344-9056-02]

**RIN 0648-XM99**

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non-American Fisheries Act Crab Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for the A season allowance of the 2009 Pacific cod sideboard limits apportioned to non-American Fisheries Act (AFA) crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2009 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 22, 2009, until 1200 hrs, A.l.t., September 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council

under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of 2009 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA is 788 metric tons (mt) for the GOA, as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009).

In accordance with § 680.22(e)(2)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of the 2009 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance for Pacific cod as 781 mt in the Gulf of Alaska. The remaining 7 mt in the Gulf of Alaska will be set aside as bycatch to support other anticipated groundfish fisheries. In accordance with § 680.22(e)(3), the Regional Administrator finds that this sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the sideboard directed fishing closure of Pacific cod apportioned to

non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 18, 2009.

The AA also finds good cause to waive the 30-day delay in the effective

date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 680.22 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 20, 2009.

**James P. Burgess,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E9-4016 Filed 2-20-09; 4:15 pm]

**BILLING CODE 3510-22-S**

# Proposed Rules

Federal Register

Vol. 74, No. 36

Wednesday, February 25, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 180

#### Office of the Secretary

#### 49 CFR Part 80

### Federal Railroad Administration

#### 49 CFR Part 261

### Federal Transit Administration

#### 49 CFR Part 640

### Maritime Administration

#### 49 CFR Part 1700

[Docket No. DOT-OST-2009-0004]

RIN 2105-AD70

### Credit Assistance for Surface Transportation Projects

**AGENCIES:** Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), Office of the Secretary of Transportation (OST), Department of Transportation (DOT).

**ACTION:** Withdrawal of notice of proposed rulemaking (NPRM) and request for comments.

**SUMMARY:** This notice withdraws DOT's proposed changes to its regulations implementing the Transportation Infrastructure Finance and Innovation Act (TIFIA). The NPRM is being withdrawn in order to allow the Obama Administration to review the program and decide what, if any changes, it may wish to propose.

**DATES:** February 25, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Sullivan, TIFIA Joint Program Office (202) 366-5785, or Mr. Steven Rochlis, Office of the Chief Counsel (202) 366-1395, Federal Highway

Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** On Wednesday, January 21, 2009, DOT published a NPRM (74 FR 3487) concerning the Transportation Infrastructure Finance and Innovation Act (TIFIA) to implement recent statutory changes and to incorporate certain other changes to the rule. In addition, the NPRM sought comment on policy issues with potentially significant impact on the TIFIA project selection process. This withdrawal will allow the Obama Administration to review the program and decide what, if any changes, it may wish to propose. We believe that the public will benefit from withdrawal of the proposal early in the comment period before comments have been drafted and filed pending review of the program by the new administration.

Issued in Washington, DC on February 16, 2009.

**Ray LaHood,**

*Secretary of Transportation.*

[FR Doc. E9-3975 Filed 2-24-09; 8:45 am]

**BILLING CODE 4910-9X-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

RIN 0648-XN22

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Bottom Longline Petition

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Announcement of receipt of petitions for rulemaking; request for comments.

**SUMMARY:** NMFS announces the receipt of two petitions for rulemaking from several non-governmental organizations (NGOs). These petitions request NMFS take specific actions to address sea turtle interactions in the bottom longline component of the commercial reef fish fishery.

**DATES:** Comments will be accepted through March 27, 2009.

**ADDRESSES:** You may submit comments on the proposed rule, identified by "0648-XN22" by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.
- Fax: 727-824-5308; Attention: Peter Hood.
- Mail: Peter Hood, Southeast Regional Office, NMFS, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2009-0031" in the keyword search, then select "Send a Comment or Submission." NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the petitions may be obtained from Peter Hood at the address specified above.

#### FOR FURTHER INFORMATION CONTACT:

Peter Hood, telephone 727-824-5305, fax 727-824-5308, e-mail [Peter.Hood@noaa.gov](mailto:Peter.Hood@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Oceana has petitioned the Gulf of Mexico Fishery Management Council (Council) and NMFS to implement emergency regulations for the bottom longline component of the Gulf of Mexico (Gulf) reef fish fishery to mitigate the high levels of loggerhead sea turtle bycatch in the fishery and to implement appropriate long-term actions, through an amendment to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP), to ensure adequate protection for the loggerhead sea turtle populations. The Oceana petition specifically requests NMFS prohibit the use of reef fish bottom longline gear in waters shallower than 55 fathoms (100m) in the

Gulf of Mexico to protect loggerhead sea turtles within the depths where all observed takes have occurred, and that NMFS prohibit the use of squid as bait when fishing with reef fish bottom longlines in waters deeper than 55 fathoms (100m) to further reduce the possibility of takes.

Another petition from the Center for Biological Diversity, Defenders of Wildlife, Earthjustice, Caribbean Conservation Corporation, Gulf Restoration Network, and Turtle Island Restoration Network alleges NMFS has violated the Endangered Species Act (ESA) by allowing the bottom longline component of the reef fish fishery to continue to operate given evidence it has exceeded its take based on the incidental take statement (ITS) from a 2005 biological opinion (opinion). This petition requests that NMFS close the bottom longline component of the Gulf reef fish fishery immediately until NMFS has put in place sufficient measures to protect loggerhead sea turtles consistent with the guidelines of the ESA.

According to the petitions filed by the NGOs, the reasons sea turtle bycatch by reef fish bottom longlines requires emergency action are:

(1) A NMFS report released in 2008 suggests loggerhead sea turtle take has exceeded that allowed by the ITS from a 2005 opinion. The opinion concluded

continued authorization of the Gulf of Mexico reef fish fishery managed under the FMP was not likely to jeopardize the continued existence of sea turtles and smalltooth sawfish. An ITS was issued in the opinion specifying anticipated sea turtle and smalltooth sawfish take on a 3-year basis. For loggerhead sea turtles, the anticipated 3-year incidental take for the Gulf reef fish bottom longline fishery was 85 takes, of which 42 would be lethal. The 2008 NMFS report using observer data estimated the level of take during an 18-month period was between 411–1,983 hard-shell sea turtles, primarily comprised of loggerheads.

(2) Information from the Florida Fish and Wildlife Conservation Commission shows declining trends in the number of nesting loggerhead sea turtles on Florida beaches. Loggerhead nesting at Florida index nesting beaches has declined 40 percent between 1989 and 2008. These declines have been interpreted as a possible decline in the sub-adult and adult population.

(3) By not taking action, NMFS is in violation of the Endangered Species Act (ESA). Specifically, the petitioners allege NMFS cannot ensure against jeopardy by continuing to authorize Gulf reef fish bottom longline fishing without having assessed the impacts of excessive take by the fishery in violation of ESA section 7(a)(2). They also allege

that by allowing the fishery to continue, NMFS is allowing loggerhead sea turtle take to continue in violation of ESA sections 7(d) and 9.

Comments received will be considered by NMFS in determining whether to proceed with the development of regulations suggested by the petitions. Upon determining whether to open the rulemaking suggested by the petition, the Assistant Administrator Fisheries, NOAA, will publish a notice of the agency's decision or action in the **Federal Register**.

Additionally, the Council has requested that NMFS implement emergency regulations to address the sea turtle bycatch in the bottom longline component of the commercial reef fish fishery. Specifically, they requested that fishing with bottom longlines for reef fish be prohibited inside of 50 fathoms (91.4 m) in the eastern Gulf of Mexico. NMFS is considering the Council's request that it implement these restrictions independently from its consideration of the NGO's petition for rulemaking.

Dated: February 19, 2009.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For  
Regulatory Programs, National Marine  
Fisheries Service.*

[FR Doc. E9-4021 Filed 2-24-09; 8:45 am]

**BILLING CODE 3510-22-S**

# Notices

Federal Register

Vol. 74, No. 36

Wednesday, February 25, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## GOVERNMENT ACCOUNTABILITY OFFICE

### Health Information Technology (HIT) Policy Committee Nomination Letters

**AGENCY:** Government Accountability Office (GAO).

**ACTION:** Notice on letters of nomination.

**SUMMARY:** The American Recovery and Reinvestment Act of 2009 (Act) established the HIT Policy Committee to make recommendations on the implementation of a nationwide health information technology infrastructure to the National Coordinator for Health Information Technology, whose office was also established by the Act. The HIT Policy Committee consists of at least 20 members, 13 of which are to be appointed by the Comptroller General within 45 days of enactment of the Act. For appointments to the HIT Policy Committee that will be made no later than April 3, 2009, I am announcing the following: Letters of nomination and resumes should be submitted by March 6, 2009 to ensure adequate opportunity for review and consideration of nominees prior to appointment of members.

**ADDRESSES:** GAO: 441 G Street, NW., Washington, DC 20548.

**FOR FURTHER INFORMATION CONTACT:** GAO: Office of Public Affairs, (202) 512-4800. 13101, American Recovery and Reinvestment Act of 2009.

**Gene L. Dodaro,**

*Acting Comptroller General of the United States.*

[FR Doc. E9-3906 Filed 2-24-09; 8:45 am]

**BILLING CODE 1610-02-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Crescent Ranger District; Deschutes National Forest; Oregon; Three Trails Off Highway Vehicle Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The USDA, Forest Service, will prepare an Environmental Impact Statement (EIS) on a proposed action to designate an Off Highway Vehicle (OHV) trail system on the Crescent Ranger District of the Deschutes National Forest. In addition, the proposal would close roads, rehabilitate unneeded trails, and develop staging areas within the 77,000-acre project area. The proposed trail system would be located on National Forest lands between Crescent Lake Junction and the boundary of the Winema National Forest, west of Crescent, Oregon. The legal location is Townships 23-26 south and Ranges 6-9 east, Willamette Meridian. The analysis area contains three distinct areas with a focused trail system that will eventually be interconnected: Two Rivers, Walker Mountain, and Crescent Lake Junction. The alternatives will include the proposed action, no action, and additional alternatives that respond to issues generated through the scoping process. The agency will give notice of the full environmental analysis and decision making process so interested and affected people may participate and contribute to the final decision.

**DATES:** Comments concerning the scope of the analysis must be received by 30 days following the date that this notice appears in the **Federal Register**.

**ADDRESSES:** Send written comments to Joan Kittrell, Team Leader, Crescent Ranger District, P.O. Box 208, Crescent, Oregon 97733, or submit to [comments-pacificnorthwest-deschutes-crescent@fs.fed.us](mailto:comments-pacificnorthwest-deschutes-crescent@fs.fed.us). Please put "Three Trails OHV Scoping" in the subject line of your e-mail. You will have another opportunity for comment when alternatives have been developed and the Environmental Impact Statement is made available.

**FOR FURTHER INFORMATION CONTACT:** Joan Kittrell, Team Leader, Crescent Ranger District, P.O. Box 208, Crescent, Oregon 97733, phone (541) 433-3200.

*Responsible Official:* The responsible official will be John Allen, Deschutes National Forest Supervisor, 1001 SW Emkay Drive, Bend, Oregon 97701.

#### SUPPLEMENTARY INFORMATION:

*Purpose and Need.* The need for this site-specific proposal is basically a result of a much larger process all National Forests are implementing; the Travel Management Rule. In 2005, the Forest Service codified a national rule that prohibits motorized travel off of designated routes. The Deschutes National Forest is currently in the process of developing an Environmental Impact Statement (EIS) to display the environmental effects of implementing the Travel Management Rule, which is expected to occur by 2010. Currently, there are no designated OHV trails on the Crescent Ranger District. The Three Trails area is used extensively by off highway enthusiasts, as demonstrated by the many user-created trails. They also utilize other existing roads (closed and open) which may or may not be maintained for high clearance vehicles. Recognizing the effect to the OHV community once the Travel Management Rule is implemented, the Deschutes and Ochoco National Forests were proactive in identifying opportunities for a trail system in sustainable locations. Through a working group of motorized and non-motorized participants, three areas were identified that had potential community support for a designated trail system. The Three Trails OHV Project is one of them.

*Proposed Action.* Basically, the proposal would provide approximately 110-130 miles of interlinking trails in three main areas with associated staging areas. The trail system would vary in skill level and density to match the terrain, design of the staging areas, and to provide an opportunity for beginner through advanced riding experiences. Where redundant access exists, or user-created trails are in undesired locations (such as within riparian resources or desired wildlife habitat), closure and rehabilitation/restoration would be performed on 50 miles. To balance the increase open road/trail density associated with a designated trail system, approximately 65 miles of roads would be closed. A general season of use would be May 1 through October 31.

*Comment.* Public comments about this proposal are requested in order to

assist in identifying issues, determine how to best manage the resources, and to focus the analysis. Comments received to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

A draft EIS will be filed with the Environmental Protection Agency (EPA) and available for public review by Summer 2009. The EPA will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register**. The final EIS is scheduled to be available Fall 2009.

The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts [*City of Angoon v. Harris*, 490 F. Supp. 1334, 1338 (E.D., Wis. 1980)]. Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that comments and objections are made available to the

Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS of the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to comments received during the comment period for the draft EIS. The Forest Service is the lead agency and the responsible official is the Crescent District Ranger, Deschutes National Forest. The responsible official will decide where, and whether or not to designate a trail system, staging areas, and close roads. The responsible official will also decide how to mitigate impacts of these actions and will determine when and how monitoring of effects will take place.

The Three Trails OHV Project decision and the reasons for the decision will be documented in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (35 CFR Part 215).

**John Allen,**

*Deschutes National Forest Supervisor.*

[FR Doc. E9-3787 Filed 2-24-09; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Tonka Timber Sale Project Environmental Impact Statement**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) on a proposal to harvest timber for the Tonka Timber Sale EIS on the Lindenberg Peninsula, Kupreanof Island, on the Petersburg Ranger District, Tongass National Forest. The proposed action is to harvest approximately 60 million board feet (mmbf) of timber from about 3,500 acres of forested land. An estimated 11 miles

of new road is associated with this proposed action. A range of alternatives, responsive to significant issues, will be developed and will include a no action alternative. The existing marine access facility, (MAF) located along the eastern shore of Lindenberg Peninsula, in the Wrangell Narrows, would be used and further development of the MAF is included in the proposed action. This development would facilitate the transport and scaling of logs for this proposed project and future long-term production of young-growth from the project area. This project is within the MitkofYKupreanof biogeographic province. The Record of Decision will disclose whether and where the Forest Supervisor has decided to provide timber harvest units, roads and associated timber harvesting facilities.

**DATES:** A scoping letter will be mailed out in December 2008. Individuals who want to receive a copy of this mailing or who want to be on the project mailing list should contact the Petersburg Ranger District at the address below. The Draft Environmental Impact Statement is projected to be filed with the Environmental Protection Agency (EPA) in the summer of 2009 and will begin a 45-day public comment period. The Final Environmental Impact Statement and Record of Decision are scheduled to be published the spring of 2010.

**ADDRESSES:** You may comment on the project in the following ways: Send written comments to the Petersburg Ranger District, Tongass National Forest, Attn: Ben Case Tonka Timber Sale Project EIS, P.O. Box 1328, Petersburg, AK 99833, or hand deliver them to the Petersburg Ranger District, 12 N Nordic Drive, Petersburg, Alaska. The FAX number is (907) 772-5995. Send e-mail comments to: [comments-alaska-tongass-petersburg@fs.fed.us](mailto:comments-alaska-tongass-petersburg@fs.fed.us) with Tonka Timber Sale Project EIS in the subject line. Include your name, address and organization name if you are commenting as a representative.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposal and EIS should be directed to Christopher Savage, District Ranger, Petersburg Ranger District, Tongass National Forest, P.O. Box 1328, Petersburg, AK 99833, telephone (907) 772-3871, or Ben Case, Team Leader, Petersburg Ranger District, P.O. Box 1328, Petersburg, AK 99833, telephone (907) 772-3871.

#### **SUPPLEMENTARY INFORMATION:**

*Background:* The proposed Tonka Timber Sale Project Area is approximately 62,150 acres and falls within the Tongass Land Management

Value Comparison Units (VCUs) 4370, 4390 and 4470. These VCUs and the Tonka Project Area are entirely within the Phase 1 Adaptive Management Strategy area of the 2008 Forest Plan. The project area is within Townships 58, 59, 60 and 61 South, and Ranges 77, 78, and 79 East, Copper River Meridian. The area is partially roaded as a result of ongoing timber sales and past timber sales dating back to 1980. The Tonka marine access facility, and the associated road system, provides vehicle access to the project area.

#### **Purpose and Need for Action**

The purpose and need for the proposed action responds to the goals and objectives identified by the Tongass Land Management Plan, as amended, and helps move the area toward the desired conditions as described in the Forest Plan. The Forest Supervisor is the Responsible Official for this action and will decide whether or not to harvest timber from the Tonka Timber Sale project area, and if so, how this timber will be harvested. The decision will be based on the information that is disclosed in the environmental impact statement. The responsible official will consider comments, responses, the disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and will state that rationale in the Record of Decision.

The purpose of the Tonka Timber Sale Project is to:

- Manage the timber resource for production of sawtimber and other wood products from suitable lands made available for timber harvest on an even flow, long-term sustained yield basis, and in an economically efficient manner.
- Seek to provide a timber supply sufficient to meet the annual market demand for Tongass National Forest timber and the market demand for the planning cycle.

**Proposed Action:** The Tonka Timber Sale Project proposes harvest of approximately 60 million board feet (mmbf) of timber from approximately 3,500 acres of forested land. An estimated 11 miles of new road would be necessary for this timber harvest. This proposal includes further study and development of the marine access facility (MAF). The existing MAF located along the eastern shore of Lindenberg Peninsula, in the Wrangell Narrows, would be used to transfer logs into the water or onto barges for transport to a mill. Actions associated with this development of the MAE includes clearing five additional acres in close proximity to the Tonka MAF to

accommodate log sorting, scaling and service equipment, and modifying the approach and turn-around that equipment uses to access the water or barges. Management activities will adhere to Forest Plan Standards and Guidelines and best management practices will be applied. Alternatives to the proposed action, including a “no action” alternative, will be developed for the Draft Environmental Impact Statement. Subsistence hearings, as provided for in Title VIII, Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), will be conducted, if necessary, during the comment period on the Draft Environmental Impact Statement.

**Public Participation:** This project was placed on the 2007 Schedule of Proposed Actions. This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Public participation has been an integral component of the study process and will continue to be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Tribal Governments and corporations, Federal, State, and local agencies, individuals and organizations that may be interested in, or affected by, the proposed activities. The mailing list will include: those who have requested to be on this project mailing list, or any timber harvest projects mailing list; those people who reside within the project area; outfitters/guides who have permits within or adjacent to the area; and local, state, federally-recognized tribal governments, and federal government agencies. The Tonka project was presented to the public at two Petersburg Ranger District Open-houses; one held on May, 5 2008 in Petersburg, Alaska, and one held in Kake, Alaska on July 7, 2008. Public input on the project was received through written comments.

The scoping package will be available at future Petersburg Ranger District open houses. The scoping process includes: (1) Identification of potential issues; (2) identification of issues to be analyzed in depth; and (3) elimination of non-significant issues or those which have been covered by a previous environmental review.

**Tentative Issues:** Tentative issues identified for analysis in the EIS include the potential effects of the project on and the relationship of the project to: Deer habitat/deer subsistence use, timber supply and timber sale economics, and scenery. Based on results of scoping and the interdisciplinary development of

significant issues, alternatives, including a “no action” alternative, will be developed for the Draft Environmental Impact.

**Early Notice of Importance of Public Participation in Subsequent Environmental Review:** A Draft Environmental Impact Statement will be prepared for comment. The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency published the notice of availability in the **Federal Register**. It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative review or judicial review. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review. To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during scoping and comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft Environmental Impact Statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Comments submitted anonymously will be accepted and considered; however, those who submit anonymous

comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

*Permits:* Permits required for implementation include the following:

1. *U.S. Army Corps of Engineers*

- Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
- Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899.

2. *Environmental Protection Agency*

- General National Pollutant Discharge Elimination System Permit for Log Transfer Facilities in Alaska;
- Review Spill Prevention Control and Countermeasure Plan.

3. *State of Alaska, Department of Natural Resources*

- Tideland Permit and Lease or Easement;
- Certification of Compliance with Alaska Water Quality Standards (401 Certification) Chapter 20.

4. *Office of Project Management & Permitting (DNR)*

- Coastal Zone Consistency Determination concurrence.

5. *State of Alaska, Department of Environmental Conservation*

- Solid Waste Disposal Permit.

*Responsible Official:* Forrest Cole, Forest Supervisor, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901.

*Nature of Decision To Be Made:* The Forest Supervisor is the Responsible Official for this action and will decide whether or not to harvest timber from the Tonka Timber Sale Project project area, and if so, the amount, location and method how this timber will be harvested. The decision will be based on the information that is disclosed in

the environmental impact statement. The responsible official will consider comments, responses, the disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and will state that rationale in the Record of Decision.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: February 17, 2009.

**Forrest Cole,**

*Forest Supervisor.*

[FR Doc. E9-3878 Filed 2-24-09; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Chequamegon-Nicolet National Forest, Wisconsin; Honey Creek-Padus Project**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental impacts of proposed land management activities and corresponding alternatives within the Honey Creek-Padus Project. The purpose of the Honey Creek-Padus Project is to implement land management activities that are consistent with direction in the Chequamegon-Nicolet National Forest 2004 Revised Land and Resource Management Plan and respond to the specific needs identified in the project area.

Honey Creek-Padus Project is located on National Forest System lands, administered by the Lakewood-Laona Ranger District, north of Wabeno, WI. The legal description of the project is Township 35 North, Range 14 and 15 East.

**DATES:** Comments concerning the scope of the analysis must be received by March 13, 2009. The draft environmental impact statement is expected in September 2009 and the final environmental impact statement is expected February 2010.

**ADDRESSES:** Send written comments concerning this project to Marilee Houtler, Attn: Honey Creek-Padus, Lakewood-Laona Ranger District, 15085 State Road 32, Lakewood, WI 54138. Comments may also be sent via e-mail to *comments-eastern-chequamegon-*

*nicolet-lakewood@fs.fed.us*, or via facsimile to 715-276-3594.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to appeal the subsequent decision.

#### **FOR FURTHER INFORMATION CONTACT:**

Marilee Houtler, NEPA Coordinator (see address above), phone 715-276-6333.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The information presented in this notice is included to help the reviewer determine if they are interested in or potentially affected by the proposed land management activities. The information presented in this notice is summarized. Those who wish to provide comments, or are otherwise interested in or affected by the project, are encouraged to obtain additional information from the contact listed above.

#### **Purpose and Need for Action**

The purpose and need for action by the agency is to address notable gaps between the existing vegetation and access conditions in the Honey Creek-Padus landscape and the desired conditions to be provided under the Chequamegon-Nicolet National Forest 2004 Land and Resource Management Plan. Of primary importance are needs for change in: (1) Uneven-aged northern hardwood age structure and density; (2) composition of aspen and hardwoods; and (3) species age class distribution. These are the dominant habitats in the Honey Creek-Padus Project area. Preliminary analysis of the project area indicates that there are certain conditions that warrant action to accomplish the direction and desired conditions identified in the forest plan.

#### **Proposed Action**

Based on the opportunities and needs outlined in the Purpose and Need section, the Forest Service proposes the following actions in the Honey Creek-Padus Project area: 6,703 acres of timber harvest to manage species age diversity, species composition, improve growing conditions, stand tending and reforestation, and access management. Implementation is planned for 2010.

**Responsible Official**

The responsible official for this project is Jeff Seefeldt, Lakewood-Laona District Ranger, Chequamegon-Nicolet National Forest.

**Nature of Decision To Be Made**

Decision making will be limited to specific activities relating to the proposed actions. The primary decision to be made will be whether or not to implement the proposed action, another action alternative, or parts of alternatives that respond to the project's purpose and need. This decision would be documented in a record of decision.

**Preliminary Issues**

Comments from American Indian tribes, the public, and other agencies will be considered in identifying preliminary issues.

**Scoping Process**

This notice of intent initiates the scoping process, which guides the development of the EIS. The 45 day comment period will start after the publication in the **Federal Register** of the Notice of Availability for the Honey Creek-Padus Project Draft EIS.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated: February 19, 2009.

**Jeanne M. Higgins,**

*Forest Supervisor.*

[FR Doc. E9-3992 Filed 2-24-09; 8:45 am]

**BILLING CODE 3410-11-P**

**DEPARTMENT OF AGRICULTURE****Forest Service****Mendocino Resource Advisory Committee**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Mendocino County Resource Advisory Committee will meet March 13, 2009 (RAC) in Willits, California. Agenda items to be covered include: (1) Approval of minutes, (2) Handout discussion, (3) Public Comment, (4) Financial Report, (5) Subcommittees, (6) Matters before the

group/discussion—items of interest, (7) Discussion/approval of projects, (8) Membership, (9) Next agenda and meeting date.

**DATES:** The meeting will be held on March 13, 2009, from 9 a.m. until 12 noon.

**ADDRESSES:** The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

**FOR FURTHER INFORMATION CONTACT:** Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo, Ranger District, 78150 Covelo Road, Covelo, CA 95428. (707) 983-6658; E-mail [rhurt@fs.fed.us](mailto:rhurt@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by March 10, 2009. Public comment will have the opportunity to address the committee at the meeting.

Dated: February 12, 2009.

**Lee Johnson,**

*Designated Federal Official.*

[FR Doc. E9-3659 Filed 2-24-09; 8:45 am]

**BILLING CODE 3410-11-M**

**DEPARTMENT OF AGRICULTURE****Forest Service****Plan Revision for Uwharrie National Forest, NC**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of adjustment for resuming the land management plan revision process and Notice of commencement of the 90-day comment period for the Uwharrie National Forest Proposed Land Management Plan (hereafter referred to as the Proposed Plan).

**SUMMARY:** The USDA, Forest Service is resuming preparation of the Uwharrie National Forest (UNF) revised land management plan as directed by the National Forest Management Act (NFMA). Preparation of the revised plan was halted when the 2005 Forest Service planning rule was enjoined. A new planning rule (36 CFR Part 219) was implemented on April 21, 2008 allowing the planning process to be resumed. This notice resumes the plan revision process under the new planning rule.

Under the 2005 Rule the planning process had proceeded to the point of generating a Proposed Plan for public comment. A 90-day comment period for the Proposed Plan was initiated on

February 15, 2007 but was not completed due to enjoinder of the 2005 Planning Rule on March 30, 2007. This notice serves to initiate a new 90-day public comment period on the Proposed Plan.

*This notice provides:*

1. Information on how to view and/or obtain copies of the Proposed Plan and the Comprehensive Evaluation Report.
2. Information on how the public can comment on the Proposed Plan, when those comments are due and, how comments can be submitted.
3. Who to contact for more information.

**DATES:** This notice is effective on February 25, 2009. Comments on the Proposed Plan must be received within 90 days after publication of this notice.

**ADDRESSES:** Submit written comments to: Uwharrie Plan Revision, National Forests in North Carolina, 160-A Zillico Street, Asheville, NC 28801. Electronic mail should include "Proposed Uwharrie Plan Revision" in the subject line and be sent to: [comments-southern-north-carolina@fs.fed.us](mailto:comments-southern-north-carolina@fs.fed.us).

**FOR FURTHER INFORMATION CONTACT:** Ruth Bemer, Interdisciplinary Team Leader, National Forests in North Carolina, 160A Zillico Street, Asheville, NC 28801, 828-257-4862. More information on the UNF and Proposed Plan revision process is available at: [http://www.cs.unca.edu/nfsnc/uwharrie\\_plan/](http://www.cs.unca.edu/nfsnc/uwharrie_plan/).

**Documents Available for Review**

The following documents are available for review. They are available either online at: [http://www.cs.unca.edu/nfsnc/uwharrie\\_plan/](http://www.cs.unca.edu/nfsnc/uwharrie_plan/) or hardcopies are available by sending a request to [comments-southern-north-carolina@fsfed.us](mailto:comments-southern-north-carolina@fsfed.us) or by contacting the address shown above.

1. Uwharrie National Forest Proposed Land Management Plan.

2. Comprehensive Evaluation Report, which includes the following separate documents:

- Terrestrial Ecosystem Sustainability
  - Aquatic Ecosystem Sustainability
  - Social Economic Sustainability and Social/Economic Overview
3. Timber Resource Analysis.

**Comment Requested**

The Forest Service is seeking comments from individuals, organizations, and federal, state, and local governments and agencies on the Uwharrie National Forest Proposed Land Management Plan. Comments on the Proposed Plan should be submitted within 90-days beginning February 25,

2009. Comments previously submitted in 2007 will be considered and need not be resubmitted.

#### SUPPLEMENTARY INFORMATION:

Notification of initiation of plan revision process for the Uwharrie National Forest land management plan was provided in the **Federal Register** on November 18, 2005. The plan revision was initiated under the planning procedures contained in the 2005 Forest Service planning rule (36 CFR part 219 (2005)). On March 30, 2007, the federal district court for the Northern District of California enjoined the Forest Service from implementing and using the 2005 planning rule until the agency provided notice and comment and conducted an assessment of the rule's effects on the environment and completed consultation under the Endangered Species Act. Revision of the Uwharrie National Forest land management plan under the (36 CFR part 219 (2005)) rule was suspended in response to the injunction. On April 21, 2008 the Forest Service adopted a new planning rule. This rule (36 CFR part 219 (2008)) was adopted following completion of an environmental impact statement and consultation under the Endangered Species Act. This new planning rule explicitly allows the resumption of plan revisions started under the previous rule (36 CFR part 219 (2005)) based on a finding that the revision process conforms to the new planning rule (36 CFR 219.14(b)(3)(ii)).

Prior to injunction of the 2005 planning rule the Uwharrie National Forest had developed a Comprehensive Evaluation Report using relevant scientific information; undertaken a series of collaborative meetings with interested parties to develop plan components; and prepared a Proposed Plan. These planning process steps are the same as what is required under the 2008 Rule. Based on the discussions above, I find that the planning actions taken prior to April 21, 2008 conform to the planning process of the 2008 planning rule and for that reason the plan revision process does not need to be restarted. The Uwharrie National Forest is resuming its plan revision process by initiating a 90-day public comment period on the Proposed Plan.

#### Responsible Official

The Forest Supervisor, National Forests in North Carolina, is the Responsible Official (36 CFR 219.2(b)(1)).

(Authority: 16 U.S.C. 1600–1614; 36 CFR 219.14)

Dated: February 17, 2009.

**Marisue Hilliard,**

*Forest Supervisor, National Forests in North Carolina.*

[FR Doc. E9–3936 Filed 2–24–09; 8:45 am]

**BILLING CODE 3410–11–P**

### ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

#### Meetings

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice of meetings.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Monday through Wednesday, March 16–18, 2009, at the times and location noted below.

**DATES:** The schedule of events is as follows:

#### Monday, March 16, 2009

10–11:30 a.m. Technical Programs Committee  
11:30–Noon Budget Committee  
1:30–5 p.m. Ad Hoc Committee Meetings (Closed to Public)

#### Tuesday, March 17, 2009

9:30–Noon Planning and Evaluation Meeting (Closed to Public)  
2–5 p.m. Ad Hoc Committee Meetings (Closed to Public)

#### Wednesday, March 18, 2009

9:30–11 a.m. Board Meeting

**ADDRESSES:** All meetings will be held at the Embassy Suites DC Convention Center Hotel, 900 10th Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice) and (202) 272–0082 (TTY).

**SUPPLEMENTARY INFORMATION:** At the Board meeting scheduled on Wednesday, March 18, the Access Board will consider the following agenda items:

- New Public Board Member; Swearing-in Ceremony.
- Approval of the Draft January 2009 Board Meeting Minutes.
- Election of Officers.
- Technical Programs Committee Report.
- Budget Committee Report.
- Planning and Evaluation Committee Report.

- Transportation Vehicles Ad Hoc Committee Report.
- Emergency Transportable Housing Ad Hoc Committee Report.
- Acoustics Ad Hoc Committee Report.
- Airport Terminal Access Ad Hoc Committee Report.
- Accessible Design in Education Ad Hoc Committee Report.
- Passenger Vessels Ad Hoc Committee Report.
- Information and Communications Technologies Ad Hoc Committee Report.
- Public Rights-of-Way Ad Hoc Committee Report.
- Outdoor Developed Areas Ad Hoc Committee Report.
- Election Assistance Commission Report.

All meetings are accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be available at the Board meeting. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

**David M. Capozzi,**

*Executive Director.*

[FR Doc. E9–3939 Filed 2–24–09; 8:45 am]

**BILLING CODE 8150–01–P**

### DEPARTMENT OF COMMERCE

#### Foreign–Trade Zones Board

[Docket 9–2007]

#### Foreign–Trade Zone 38 Spartanburg County, South Carolina, Termination of Review of Application for Subzone, Leiner Health Products LLC (Ibuprofen Products), Fort Mill, South Carolina

Notice is hereby given of termination of review of a subzone application submitted by the South Carolina State Ports Authority, grantee of FTZ 38, requesting special-purpose subzone status with manufacturing authority for certain ibuprofen products at the pharmaceutical manufacturing facility of Leiner Health Products, LLC, located in Fort Mill, South Carolina. The application was filed on March 2, 2007 (72 FR 10643, 3/9/07).

The termination is the result of changed circumstances, and the case has been closed without prejudice.

Dated: February 17, 2009.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. E9–4039 Filed 2–24–09; 8:45 am]

**BILLING CODE 3510–DS–S**

**DEPARTMENT OF COMMERCE****Bureau of Industry and Security****Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting**

The Materials Processing Equipment Technical Advisory Committee will meet on March 12, 2009, 9 a.m., Room 6087B, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

**Agenda***Open Session*

1. Opening Remarks and Introductions.
2. Presentation of Papers and Comments by the Public.
3. Discussion on 2009 Proposals to Wassenaar.
4. Report on proposed changes to the Export Administration Regulation.
5. Other Business.

*Closed Session*

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at [Yspringer@bis.doc.gov](mailto:Yspringer@bis.doc.gov) no later than March 5, 2009.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Export Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 18, 2009, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 sections (10)(d)), that the portion of the meeting

dealing with matters the disclosure of portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 section 10(a)(1) and 10(a)(3).

The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482-2813.

Dated: February 19, 2009.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. E9-4043 Filed 2-24-09; 8:45 am]

**BILLING CODE 3510-JT-P**

**DEPARTMENT OF COMMERCE****Bureau of Industry and Security**

[Docket No. 090213182-9184-01]

**Reporting on Offsets Agreements in Sales of Weapon Systems or Defense-Related Items to Foreign Countries or Foreign Firms for Calendar Year 2008**

**AGENCY:** Bureau of Industry and Security, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** This notice is to remind the public that U.S. firms are required to report annually to the Department of Commerce (Commerce) on contracts for the sale of defense-related items or defense-related services to foreign countries or foreign firms that are subject to offsets agreements exceeding \$5,000,000 in value. U.S. firms are also required to report annually to Commerce on offsets transactions completed in performance of existing offsets commitments for which offsets credit of \$250,000 or more has been claimed from the foreign representative. Such reports must be submitted to Commerce no later than June 15, 2009.

**ADDRESSES:** Reports should be addressed to "Offsets Program Manager, U.S. Department of Commerce, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, Room 3878, Washington, DC 20230."

**FOR FURTHER INFORMATION CONTACT:**

Ronald DeMarines, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, telephone: 202-482-3755; fax: 202-482-5650; e-mail: [rdemarin@bis.doc.gov](mailto:rdemarin@bis.doc.gov).

**SUPPLEMENTARY INFORMATION:****Background**

In 1984, the Congress enacted amendments to the Defense Production Act (DPA), including the addition of Section 309, which addresses offsets in defense trade (See 50 U.S.C. app. section 2099). Offsets are compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or services, as defined by the Arms Export Control Act and the International Traffic in Arms Regulations.

Section 309(a)(1) requires the President to submit an annual report to the Congress on the impact of offsets on the U.S. defense industrial base. In 1992, section 309 was amended to direct the Secretary of Commerce (Secretary) to function as the President's executive agent for carrying out the responsibilities set forth in that section. Specifically, section 309 authorizes the Secretary to develop and administer the regulations necessary to collect offsets data from U.S. defense exporters.

The authorities of the Secretary regarding offsets have been redelegated to the Under Secretary of the Bureau of Industry and Security (BIS). The regulations associated with offsets reporting are set forth in Part 701 of title 15 of the Code of Federal Regulations. The offsets regulations of Part 701 set forth the obligations of U.S. industry to report to the Bureau of Industry and Security, no later than June 15 of each year, offsets agreement and transaction data for the previous calendar year.

As described in section 701.1 of the regulations, U.S. firms are required to report on contracts for the sale of defense-related items or defense-related services to foreign countries or foreign firms that are subject to offsets agreements exceeding \$5,000,000 in value. U.S. firms are also required to report annually on offsets transactions completed in performance of existing offsets commitments for which offsets credit of \$250,000 or more has been claimed from the foreign representative. The required data elements and filing procedures for such reports are outlined in § 701.4 of title 15, Code of Federal Regulations.

The Department's annual report to Congress includes an aggregated summary of the data reported by industry in accordance with the offsets regulation and the DPA. As provided by section 309(c) of the DPA, BIS will not publicly disclose the information it receives through offsets reporting unless the firm furnishing the information specifically authorizes public disclosure. The information collected is

sorted and organized into an aggregate report of national offsets data, and therefore does not identify company-specific information.

Required information must be submitted to BIS no later than June 15, 2009.

Dated: February 19, 2009.

**Matthew S. Borman,**

*Acting Assistant Secretary for Export Administration.*

[FR Doc. E9-3876 Filed 2-24-09; 8:45 am]

BILLING CODE 3510-JT-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before March 17, 2009. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 09-001. Applicant: Childrens Hospital, 4650 Sunset Boulevard, Los Angeles, CA 90027. Instrument: Transmission Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used for the study of ultrastructural changes in human and animal tissue and tissue culture samples in various disease processes and experimental conditions. Justification for Duty-Free Entry: Instrument is not manufactured by any company in the United States. Application accepted by Commissioner of Customs: January 30, 2009.

Docket Number: 09-002. Applicant: U.S. Environmental Protection Agency, Acquisition Management Unit, TMS, R8, 1595 Winkoop Street, Denver, CO 80202. Instrument: Transmission Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used for qualitative and quantitative analysis of asbestos in air, dust, soil, water and biological

sample matrices. Justification for Duty-Free Entry: No instruments available domestically with the capabilities required for the intended use.

Application accepted by Commissioner of Customs: February 5, 2009.

Docket Number: 09-003. Applicant: U.S. Food and Drug Administration, Center for Food Safety & Applied Nutrition, 8301 MuirKirk Road, Laurel, MD 20708. Instrument: Transmission Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used for evaluation of biological specimens for the expression of microbial structures important in the causation of disease. Justification for Duty-Free Entry: No domestic suppliers of transmission electron microscopes. Application accepted by Commissioner of Customs: February 5, 2009.

Dated: February 20, 2009.

**Chris Cassel,**

*Acting Director, IA Subsidies Enforcement Office.*

[FR Doc. E9-4029 Filed 2-24-09; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Notice and Call for Applications for the Environmental and Clean Energy Technologies Trade Mission to Croatia, Italy, and Greece, March 30 to April 4, 2009

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice and Call for Applications for the Environmental and Clean Energy Technologies Trade Mission to Croatia, Italy, and Greece, March 30 to April 4, 2009.

#### Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (USFCS) is organizing an Environmental and Clean Energy Technologies Trade Mission to Zagreb, Croatia; Milan, Italy; and Athens, Greece, from March 30 to April 4, 2009. All three fast growing markets hold promising potential for U.S. firms offering equipment, services, and technologies in the target sectors. The mission will introduce participating U.S. firms to prospective representatives, distributors, end-users, and partners through one-on-one appointments in all three cities and will include participation in the EcoTec

Environmental Tradeshow (EcoTec 2009) in Athens, where the USFCS will provide entry to the trade show, manage a booth, and organize meetings with business and industry contacts for each of the mission participants.

#### Commercial Setting

##### Greece

Environmental protection is a priority issue in Greece, where the market for environmental equipment and services is expected to far outstrip local capacity in the future. The Greek Ministry of Environment estimates the country's environmental market to be about US\$2.2 billion, or 1.5 percent of GDP. Investment in environmental infrastructure through European Union (EU) and national programs has been the centerpiece of environmental progress in Greece. These investments have been used to construct numerous wastewater and solid waste treatment facilities, as well as new recycling plants, composting facilities, and treatment plants for industrial and hazardous waste materials.

The implementation of EU environmental legislation in national laws has created the institutional basis for successfully facing environmental protection challenges. In January 2007, the Minister of Environment announced a US\$6.3 billion investment plan for 2007-2013 for the upgrading, modernization and maintenance of environmental projects in waste management, recycling, and water treatment, to be implemented under the "Environment and Sustainable Development" program.

Following EU directives and practices, Greece is committed to introducing the necessary legislative framework for promoting the use of "clean" or "green" technologies. Renewable energy will play a major role in these initiatives. Furthermore, in an effort to catch up with commitments under the Kyoto Protocol, Greece's Minister of Environment has approved a National Allocation Plan for Emission Trading for 2008-2012, which aims to bring about a 16.6 percent reduction in greenhouse gas emissions.

Areas holding the greatest potential for U.S. firms in the Greek environmental market include waste management, recycling and biomass facilities; hazardous waste treatment and disposal; water treatment; air and sea pollution control; clean coal plants; "green" building materials; emissions monitoring and reduction; and photovoltaic plants.

At the EcoTec Environmental Tradeshow, to be held April 3-6, 2009,

mission members will have opportunities to meet with business and industry contacts in a range of sectors, including renewable energy, recycling, ecoconstruction, waste management, wastewater treatment, environmental restoration, energy conservation, and alternative fuels. EcoTec 2009 is expected to attract technical experts, local and national management councils, large commercial entities, construction companies, government procurement executives, investors, researchers, and various business representatives from all over Greece and neighboring countries (for details, see: [http://www.EcoTec.gr/Site%20EcoTec%20final/Hekthesh\\_eng.html](http://www.EcoTec.gr/Site%20EcoTec%20final/Hekthesh_eng.html)).

#### *Italy*

Italy's US\$6 billion environmental market—of which machinery and equipment account for approximately US\$1 billion—offers significant opportunities to U.S. firms providing innovative technologies. Waste management is a major issue driving Italy's environmental policy. While the practices of waste minimization and separate waste collection, waste re-use, recycling, and recovery are growing, urban and industrial waste disposal in Italy still depends largely on landfills. Investments of several billion dollars are expected over the next few years to adopt innovative recycling technologies and to build near-to-zero emission waste-to-energy plants. Recent implementation of the EU directive on waste and electronic equipment recycling is expected to expand opportunities for U.S. firms offering technological innovation.

Italy's water collection and distribution systems, as well as its urban wastewater sewage and purification systems, are also inadequate. Measures to encourage more sustainable use of water resources include new legislation for water reuse and investments in innovative technologies to prevent and detect water losses. The total investment to implement an integrated water system comprising aqueducts, sewage systems and treatment services could reach US\$55 billion countrywide in the next ten years.

With regard to soil remediation, specific legislation has established the criteria, procedures, and methods for safety and clean-up actions for environmental restoration of contaminated sites. The Italian Government has identified 40 Italian sites of "National Interest" in need of urgent clean up. It is estimated that at least 15,000 areas in Italy are currently subject to environmental investigation

and/or remediation actions. Innovative technologies in this sector are in high demand.

Italy has implemented restrictive air pollution control legislation in compliance with stringent EU regulations to cut greenhouse gas emissions by 20 percent. The environmental impact of private and public transportation remains a major problem. Italy's major municipalities have implemented a large number of projects, and the Italian Government is offering incentives to substitute older vehicles with new vehicles with lower environmental impact, but there is still much to be done.

As far as energy is concerned, Italy depends on foreign suppliers for about 80 percent of its needs. Interest in renewable energy has become an important issue on the Italian Government's agenda, and there is substantial effort in research and development to expand the use of alternative sources of energy, especially biomass, geothermal, solar (both photovoltaic and solar thermal), and wind energy.

Green building also represents an increasingly promising market, as European and local norms steer builders in that direction. Italy lags behind other European countries, but the trend is positive, and green building represents a very dynamic market niche.

While competition in Italy is fierce, U.S. environmental and energy technologies are highly regarded there. Moreover, Italy's strategic Mediterranean location makes it an ideal gateway to the emerging markets of Eastern Europe, North Africa, and the Middle East. Several Italian firms specializing in turn-key operations have strengthened their position in foreign markets. The right Italian partner could assist U.S. firms not only in penetrating the Italian market, but also in effectively entering other foreign markets.

#### *Croatia*

EU accession is the primary force affecting planning and procurement in the Croatian environmental sector. Croatia's Ministry of Environmental Protection, Physical Planning and Construction and the World Bank estimate that Croatia needs to invest more than US\$10 billion in the environmental sector prior to accession, including about US\$2.2 billion for waste management, US\$5 billion for wastewater treatment, and US\$56 million for air protection. So far, less than US\$35 million has been directly invested in environmental protection in Croatia. Expected increases in these investments, in addition to over US\$186

million from EU Pre-Accession Funds delivered over the next three years, make Croatia an attractive market for U.S. suppliers of environmental equipment and services.

Four primary environmental subsectors—waste management, wastewater treatment, air protection and renewable energy—hold opportunities for U.S. firms. Waste management is currently the largest challenge in Croatia's environmental sector. Key issues are increases in solid waste, very limited recycling, unreliable data on waste flows and quantities, and lack of organized disposal sites. According to plans, by 2025 most of the population will be included in an organized municipal waste collection system; recycling and waste treatment will grow significantly; and municipal and biodegradable waste will be significantly reduced. To meet these goals, Croatia is organizing four regional and 21 county waste management centers with treatment plants and landfills. Remediation of 176 landfills is also underway, and two upcoming tenders offer possibilities for U.S. firms. The first, the Zagreb Waste Management Center, will include an incinerator, recycling yard, and heat and electricity generating plants at an approximate cost of US\$580 million. The incinerator will be constructed next to the central wastewater treatment plant, and the resultant sewage sludge, together with municipal waste, will be used for energy generation. The second, a hazardous waste incinerator, is estimated to cost US\$22 million.

Wastewater management is a key concern in Croatia, particularly in coastal municipalities. While water supply coverage, 73 percent, is high compared to other countries in the region, coverage for sewage is only about 40 percent, and less than 12 percent of all collected wastewater is being treated. Objectives for bringing Croatian water management in line with EU regulations include creating a Water Information System; extending public water supply to 90 percent of the population; providing wastewater collection, treatment and disposal systems for 10.5 million people; and implementing flood control and multi-purpose projects. Other opportunities include three large wastewater projects currently underway: The US\$250 million Coastal Cities Pollution Control project, sponsored by the World Bank; the US\$38 million Karlovac Wastewater Management Project, financed by the European Bank for Reconstruction and Development; and the US\$18 million Inland Waters Project, financed by the World Bank.

The Air Protection Act (2005) governs air quality management in line with the EU Framework Directive 96/62/EC on ambient air quality assessment and management. Although Croatia ratified the Kyoto Protocol in May 2007, efforts are still needed to limit the growth of greenhouse gas emissions in order to meet Croatia's Kyoto target for the period of 2008 through 2012. Another priority is reduction of acid and other polluting gaseous emissions from major industrial premises such as refineries, petrochemical plants, cement factories, and large combustion plants.

In 2007, Croatia adopted important regulations to support development of renewable energy projects required to meet the goal of the minimal 5.8 percent renewable energy share in the total electric energy supply by 2010. The overall size of the renewable electric energy projects is about 330 Megawatts of new capacity in the next three years, estimated to cost approximately US\$700 million. Numerous private sector investors have submitted over a hundred projects for preliminary

approval to the Ministry of Economy, 90 percent of which are for wind farms. Other renewable energy best prospects include biomass cogeneration plants, solar thermal collectors, and bio-fuel plants.

While the Croatian environmental and clean energy markets are relatively small on the global scale, EU accession has strengthened emphasis on these sectors, pointing to opportunities for U.S. firms that are able to offer specialized equipment and services in the near term to help alleviate Croatia's existing environmental challenges and thereby position themselves for long-term market access.

### Mission Goals

The goals of the Environmental and Clean Energy Technologies Trade Mission to Italy, Croatia, and Greece are threefold: (1) To help U.S. firms explore supplier opportunities under various environmental programs; (2) to help U.S. firms initiate or expand their exports to these markets by providing business-to-business introductions and

market access information; and (3) to facilitate an effective U.S. presence at EcoTec in Athens.

### Mission Scenario

The mission will stop in Zagreb, proceed to Milan, and conclude in Athens, at EcoTec 2009. The USFCS in Athens will provide entry to the trade show, manage a booth, and organize meetings with business and industry contacts for each of the mission participants. Activities at all stops will include market briefings; pre-scheduled appointments with potential partners, distributors, representatives, and end users; networking receptions; and meetings with USFCS environmental technology specialists. The USFCS in Athens will continue to maintain a presence at EcoTec Sunday, April 5, and will assist any mission members wishing to remain to take advantage of visitor traffic at the show, expected to be highest that day. This assistance is offered to the delegation at no additional cost.

### Proposed Timetable

Monday, March 30 .....	Zagreb: Briefing, one-on-one appointments, evening reception.
Tuesday, March 31 .....	Morning, conclude appointments/Depart for Milan.
Wednesday, April 1 .....	Milan: Briefing, appointments, evening reception.
Thursday, April 2 .....	Appointments, site visits/Depart for Athens.
Friday, April 3 .....	Athens: Briefing, appointments, trade show opening, late afternoon reception.
Saturday, April 4 .....	Appointments, show activities/Mission concludes.
Sunday, April 5 .....	Bonus day.

### Participation Requirements

All parties interested in participating in the Environmental and Clean Energy Technologies Trade Mission to Italy, Croatia and Greece must complete and submit an application for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. The mission will open on a first come first served basis to minimum of seven and maximum of 10 qualified U.S. companies.

#### Fees and Expenses:

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The fee for participation in the entire mission will be US\$5,400 for large firms and US\$3,975 for a small or medium-sized enterprise (SME), which includes one principal representative.\* The fee

for each additional firm representative (large firm or SME) is \$450. Expenses for lodging, some meals, incidentals, and travel (except for in-country arrangements previously noted) will be the responsibility of each mission participant.

While priority will be given to firms applying to take part in all three cities on the mission itinerary, firms may opt to visit only one or two markets on the itinerary for the following fees:

Option	SME (US\$)	Large company (US\$)
One stop .....	2,000	3,000
Two stops .....	3,000	4,000

### Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's

schedule reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (for additional information see <http://www.export.gov/newsletter/march2008/initiatives.html>).

products and/or services, primary market objectives, and goals for participation.

- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

### Selection Criteria for Participation

Selection will be based on the following criteria:

- Suitability of the company's products or services to the three target markets and sectors.
- Applicant's potential for business in the target markets, including likelihood of exports resulting from the mission.
- Consistency of the applicant's goals and objectives with the stated scope of the mission.
- Applicant's stated intent to participate in all three markets on the mission itinerary.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will

\* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see <http://www.sba.gov/services/contractingopportunities/sizestandardstopping/index.html>). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing

be removed from an applicant's submission and not considered during the selection process.

#### Timeframe for Recruitment and Applications

Recruitment for this trade mission will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (<http://www.ita.doc.gov/doctm/tmcal.html>) and other Internet Web sites, press releases to general and trade media, e-mail blasts, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than February 27, 2009. Applications received after that date will be considered only if space and scheduling constraints permit.

#### Contacts in the United States:

Bill Cline, Director, U.S. Commercial Service, Reno, Team Leader, Global Environmental Team, U.S. Department of Commerce, Tel: 775.784.5203/Fax: 775.784.5343, Email: [envirotechmission@mail.doc.gov](mailto:envirotechmission@mail.doc.gov).

Jessica Arnold, Global Environmental Team Project Officer, U.S. Department of Commerce, Washington, DC 20004, Tel: (202) 482-2026/Fax: (202) 482-9000, Email: [envirotechmission@mail.doc.gov](mailto:envirotechmission@mail.doc.gov).

#### Contacts in Europe:

Milan, Italy: Nicoletta Postiglione, American Consulate General, Tel: 011-39-02-626-8851, Fax: 011-39-02-659-6561, Email: [envirotechmission@mail.doc.gov](mailto:envirotechmission@mail.doc.gov).

Zagreb, Croatia: Pamela Ward, American Embassy/Zagreb, Tel: 011-385-1-661-2224, Fax: 011-385-1-661-2446, Email: [envirotechmission@mail.doc.gov](mailto:envirotechmission@mail.doc.gov).

Athens, Greece: William Kutson, U.S. Embassy/Athens, Tel: 30/210/720-2303/720-2302, Fax: 30/210/721-8660, Email: [envirotechmission@mail.doc.gov](mailto:envirotechmission@mail.doc.gov).

Dated: February 18, 2009.

**Jessica Arnold,**

*International Trade Specialist, U.S. Commercial Service, U.S. Department of Commerce.*

[FR Doc. E9-3953 Filed 2-24-09; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-890]

#### Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** January 1, 2007

**SUMMARY:** On January 9, 2009, the Department of Commerce (the "Department") published a notice of initiation and preliminary results of antidumping duty ("AD") changed circumstances review with intent to revoke, in part, the AD order on wooden bedroom furniture from the People's Republic of China ("PRC"). See *Wooden Bedroom Furniture from the People's Republic of China: Notice of Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Order in Part*, 74 FR 886 (January 9, 2009) ("Initiation and Preliminary Results"). We are now revoking this order in part, with regard to the following product: toy boxes, as described in the relevant footnote (footnote 15 in this document) of the "Scope of the Order" section of this notice, based on the fact that domestic parties have expressed no further interest in the relief provided by the order with respect to the imports of these toy boxes, as so described.

In its November 25, 2008, submission, the American Furniture Manufacturers Committee for Legal Trade and its individual members (the "AFMC" or "petitioners") stated that they no longer have any interest in seeking antidumping relief from imports of such toy boxes as defined in the "Scope of the Order" section below.

**FOR FURTHER INFORMATION CONTACT:** Paul Stolz or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482-4474 and (202) 482-3434, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On November 25, 2008, the Department received a request on behalf of the petitioners, for revocation in part of the AD order on wooden bedroom furniture from the PRC pursuant to sections 751(b)(1) and 782(h) of the Tariff Act of 1930, as amended ("the

Act"), with respect to toy boxes. In their November 25, 2008, submission, Petitioners stated that they no longer have any interest in antidumping relief from imports of such toy boxes.

#### Scope of Changed Circumstances Review

The merchandise covered by this changed circumstances review are toy boxes from the PRC meeting the following criteria. The toy box must: (1) be wider than it is tall; (2) have dimensions within 16 27 inches in height, 15 18 inches in depth, and 21 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials (ASTM) standard F963-03. Toy boxes are boxes generally designed for the purpose of storing children's items such as toys, books, and playthings. Effective upon publication of this final results of changed circumstances review in the **Federal Register**, the amended scope of the order will read as follows.

#### Scope of the Amended Order

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type glass cabinets; (4) dressers with framed glass

mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests—on-chests;<sup>1</sup> highboys,<sup>2</sup> lowboys,<sup>3</sup> chests of drawers,<sup>4</sup> chests,<sup>5</sup> door chests,<sup>6</sup> chiffoniers,<sup>7</sup> hutches,<sup>8</sup> and armoires;<sup>9</sup> (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate;<sup>10</sup>

<sup>1</sup> A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

<sup>2</sup> A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

<sup>3</sup> A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

<sup>4</sup> A chest of drawers is typically a case containing drawers for storing clothing.

<sup>5</sup> A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

<sup>6</sup> A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

<sup>7</sup> A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

<sup>8</sup> A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

<sup>9</sup> An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

<sup>10</sup> As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to

(9) jewelry armoires;<sup>11</sup> (10) cheval mirrors;<sup>12</sup> (11) certain metal parts;<sup>13</sup> (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds;<sup>14</sup> and (14) toy boxes.<sup>15</sup> Imports of subject merchandise

a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. See Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

<sup>11</sup> Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24" in width, 18" in depth, and 49" in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. See Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China, dated August 31, 2004. See also *Wooden Bedroom Furniture from the People's Republic of China: Notice of Final Results of Changed Circumstances Review and Revocation in Part*, 71 FR 38621 (July 7, 2006).

<sup>12</sup> Cheval mirrors are any framed, tiltable mirror with a height in excess of 50" that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, i.e., a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet lined with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. See *Wooden Bedroom Furniture From the People's Republic of China: Final Results of Changed Circumstances Review and Determination To Revoke Order in Part*, 72 FR 948 (January 9, 2007).

<sup>13</sup> Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (i.e., wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 9403.90.7000.

<sup>14</sup> Upholstered beds that are completely upholstered, i.e., containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. See *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination To Revoke Order in Part*, 72 FR 7013 (February 14, 2007).

<sup>15</sup> To be excluded the toy box must: 1) be wider than it is tall; (2) have dimensions within 16 - 27 inches in height, 15 - 18 inches in depth, and 21 - 30 inches in width; (3) have a hinged lid that

are classified under subheading 9403.50.9040 of the HTSUS as "wooden . . . beds" and under subheading 9403.50.9080 of the HTSUS as "other . . . wooden furniture of a kind used in the bedroom." In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9040 of the HTSUS as "parts of wood" and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as "glass mirrors . . . framed." This order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

### Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning toy boxes, as described herein, constitutes changed circumstances sufficient to warrant revocation of this order in part. No party commented on the *Initiation and Preliminary Results*. Additionally, no party contests that petitioner's statement of no interest represents the views of domestic producers accounting for substantially all of the production of the particular domestic like product (i.e., toy boxes). Therefore, the Department is partially revoking the order on wooden bedroom furniture with respect to toy boxes from the PRC with regard to products which meet the specifications detailed above, in accordance with sections 751(b), (d) and 782(h) of the Act and 19 CFR 351.216(d) and 351.222(g).

In this changed circumstances review we have determined to revoke the order in part, retroactive to January 1, 2007, (the date following the last day of the most recently completed administrative review) for unliquidated entries in light of: 1) the submission by petitioners; 2) the fact that entries after this date are not subject to a final determination by the Department; and 3) we have received no comments following our preliminary results of January 9, 2009, where we indicated that this changed circumstances review will apply retroactively. We hereby notify the

encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials (ASTM) standard F963-03. Toy boxes are boxes generally designed for the purpose of storing children's items such as toys, books, and playthings.

public of our revocation in part with respect to toy boxes in the antidumping duty order on wooden bedroom furniture from the PRC retroactive to January 1, 2007.

We will instruct the U.S. Customs and Border Protection to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of toy boxes, made on or after January 1, 2007, meeting the specifications indicated above, in accordance with 19 CFR 351.222.

This notice serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751(b), (d) and 782(h) of the Act and 19 CFR 351.216(e) and 351.222(g).

Dated: February 13, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9-4033 Filed 2-24-09; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### **Building for the Future: U.S. Building Products Trade Mission to Asia**

**AGENCY:** Department of Commerce.

**ACTION:** Revision.

#### **Mission Statement**

Building for the Future: U.S. Building Products Trade Mission to Asia. April 20-28, 2009.

#### **Mission Description**

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is organizing a Trade Mission to Hong Kong, Singapore, and Bangkok, Thailand, April 20-28, 2009, to promote U.S. firms offering environmentally friendly design and engineering services, energy efficient building systems, efficient lighting and heating/ventilation/air conditioning

(HVAC) systems, and eco-friendly building products.

Growing interest in energy efficiency, environmental protection, and "green" building are generating significant opportunities in these markets for U.S. firms offering innovative products and technologies. The mission will include one-on-one business matchmaking appointments with prospective agents, distributors, and end-users; updates on major projects; Embassy briefings on doing business in each country market; and networking receptions.

#### **Commercial Setting**

##### *Hong Kong*

In Hong Kong's estimated \$24 billion annual construction and building sector, usage of eco-friendly and energy-saving products has increased in recent years as developers are becoming more concerned about their environmental image and seek to attract multinational corporate tenants who prefer features that will save energy, reduce waste, and increase productivity in their commercial projects.

Government regulations and incentives play a pivotal role in shaping the design of residential buildings in Hong Kong. Government incentives to encourage green building and waste reduction include exempting green features from the calculation of the gross floor area of a property, which grants developers extra floor space to boost the market value of their properties.

In the last five years, growth in demand has been significant for environmentally-friendly products such as T5 lamps, variable-speed pumps, heat recovery systems in HVAC, service-on-demand features, advanced window glazings, and motion sensors. Metal formworks have extensively replaced timber. More pre-fabricated elements are used to allow cleaner construction sites. Use of photovoltaic panels has also increased, particularly in public buildings, although not on a large scale. The market for green building products in Hong Kong is far from maturity and holds genuine potential.

##### *Singapore*

Singapore's \$17 billion construction market is estimated to reach \$20 billion annually over the next five years. Government spending will be the main factor sustaining construction demand, with emphasis on infrastructure projects. Singapore's interest in green building promises to be substantial. The Government has set aside about \$13 million over the next three years for the Green Mark Incentive Program, administered by the Building and

Construction Authority (BCA), offering cash incentives to private developers and building owners for efforts to achieve a BCA Green Mark Gold rating for new or retrofitted buildings with a gross floor area exceeding 5,000 square meters. Furthermore, under BCA's Green Mark program, the Marina Bay area is to serve as a model eco-city, with a new reservoir and gardens, and most buildings in the vicinity Green Mark certified. (For details on BCA's Green Mark program, see [http://www.bca.gov.sg/GreenMark/green\\_mark\\_buildings.html](http://www.bca.gov.sg/GreenMark/green_mark_buildings.html)).

Singapore's Housing and Development Board is developing an eco-precinct in an effort to ensure the sustainability of public housing developments. The BCA is also establishing the One North area as a model of green facilities for the industrial sector. BCA's Green Mark building program is strongly supported by Singapore's National Environment Agency, pointing to excellent opportunities for U.S. suppliers of green materials and technology. The BCA specifically recommends the use of recyclable materials, as well as products and systems designed to harness renewable energy (e.g., solar, wind, biomass), increase energy efficiency, improve indoor air quality, and reduce noise and air pollution.

Another \$34 million has been set aside to be used within the next five years for a new Research Fund for the Built Environment. This Fund aims to intensify research and development efforts in green building technologies and energy efficiency. Separately, the Singapore Economic Development Board is committing \$234 million for the green energy push, which includes an initiative to make Singapore a testing ground for new technologies, such as the latest solar panels or fuel cell engines.

In all, the market potential in Singapore for technologies, systems and equipment used in the construction of environmentally sustainable ("green") buildings is growing. This covers all types of systems and products to improve energy and water efficiency of a building, technologies and equipment that improve indoor air quality, construction systems that reduce noise and air pollution, and recyclable building materials.

##### *Thailand*

The United States and Thailand have enjoyed a special commercial relationship for 175 years under the Treaty of Amity and Commerce, which in most sectors affords U.S. companies operating in Thailand national

treatment, putting them on an “equal playing field” with Thai companies, a privilege offered to no other trading partner’s companies. The Thai market offers opportunities for U.S. companies in a number of infrastructure sectors, including building and renewable energy.

The growing necessity for energy conservation in commercial and residential buildings is opening doors for “green” building products in Thailand. As the third largest energy consuming sector, after transport and industry, commercial and residential buildings are the Thai Government’s target sector for implementation of energy conservation policies. Last year, the Ministry of Energy, through the Department of Alternative Energy Development and Efficiency, introduced a program to promote energy efficient buildings. The program provides technical assistance in building design and selection of building products such as exteriors, insulation, lighting, and HVAC. Qualified participants will be publicly endorsed as “energy efficient.” Such incentives, along with tighter building regulations and greater awareness of energy conservation among Thais, will continue to drive demand for green products and technologies in the coming years.

The Thai government’s \$8.6 billion investment plan for infrastructure development over the next five years also offers potential for U.S. suppliers of building products and services, particularly those offering eco-friendly materials and technologies for the construction of rail-based mass transit systems. American building products, commanding a reputation for quality and technology, stand much to gain from these growing demand trends in Thailand.

### Mission Goals

The Building for the Future Trade Mission will help U.S. firms to explore supplier opportunities under various infrastructure programs and initiate or expand their exports to the three markets through business-to-business introductions, market briefings, and networking activities.

### Mission Scenario

The mission will stop in Hong Kong, Singapore and Bangkok, Thailand. In each city, participants will meet with government officials, potential buyers, agents/distributors, and other business partners. They will also attend market briefings by U.S. Embassy officials, as well as networking events offering further opportunities to speak with local business and industry decision-makers.

### Proposed Mission Timetable

April 20, 2009 .....	Mission begins in Hong Kong. Market briefing. Business match-making. Networking reception.
April 20–21, 2009 .....	Business match-making.
April 22, 2009 .....	Travel to Bangkok, Thailand. Networking reception.
April 23–24, 2009 .....	Market Briefing. Business match-making.
April 25 or 26, 2009 ..	Travel to Singapore on weekend.
April 27–28, 2009 .....	Briefing. Business match-making. Networking reception. Mission concludes.

### Participation Requirements

All parties interested in participating in the Building for the Future Trade Mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 7 and maximum of 15 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business in the target markets as well as U.S. companies seeking to enter the target markets for the first time may apply.

### Fees and Expenses

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be \$5,785 for a large firm and \$3,975 for a small or medium-sized enterprise (SME).<sup>\*</sup> The fee for each additional firm representative (large firm or SME) is \$450. Expenses for travel, lodging, most meals, and incidentals will be the responsibility of each mission participant. The option to participate in the mission is also being offered to U.S.-

<sup>\*</sup> An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see [http://www.sba.gov/services/contracting\\_opportunities/sizestandardstoc/index.html](http://www.sba.gov/services/contracting_opportunities/sizestandardstoc/index.html)). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service’s user fee schedule that became effective May 1, 2008 (see <http://www.export.gov/newsletter/march2008/initiatives.html> for additional information).

based firms with an established presence in the target markets or neighboring countries; the same fee structure applies.

### Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company’s products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

*Selection Criteria:* Selection will be based on the following criteria:

- Suitability of the company’s products or services in the target markets and sectors.
- Applicant’s potential for business in the target markets, including likelihood of exports resulting from the mission.
- Consistency of the applicant’s goals and objectives with the stated scope of the trade mission.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant’s submission and not considered during the selection process.

### Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner. Outreach will include publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (<http://www.ita.doc.gov/doctm/tmcal.html>) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The International Trade Administration will explore and welcome outreach assistance from other interested organizations, including other U.S. Government agencies.

Recruitment for the mission will begin immediately and close March 4, 2009. Applications are available on-line on the mission Web site at <http://www.buyusa.gov/globaldesignbuild/futurebuildmission.html>. They can also be obtained by contacting the Mission Project Officer listed below. Applications received after March 4, 2009 will be considered only if space and scheduling constraints permit.

#### Contacts

Sean Timmins, Global Trade Programs, Commercial Service Trade Missions Program, Tel: 202-482-1841, E-mail: [FutureBuildMission@mail.doc.gov](mailto:FutureBuildMission@mail.doc.gov).  
Terri Batch, International Trade Specialist, Global Design Build Team Leader, Tel: 310-882-1750, E-mail: [FutureBuildMission@mail.doc.gov](mailto:FutureBuildMission@mail.doc.gov).

#### Sean Timmins,

*Global Trade Programs, Commercial Service Trade Missions Program.*

[FR Doc. E9-3957 Filed 2-24-09; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### **Mission Statement; European Port Infrastructure and Security Trade Mission to Germany, Belgium and Italy May 4-8, 2009**

**AGENCY:** Department of Commerce.

**ACTION:** Notice.

#### **Mission Description**

The United States Department of Commerce's International Trade Administration, U.S. and Foreign Commercial Service, is organizing a Trade Mission to Germany, Belgium and Italy, May 4-8, 2009. This event is intended to tap immediate opportunities in port infrastructure, and security and logistics in Hamburg, Germany; Antwerp, Belgium; and Genoa, Italy. Because these ports are key gateways to the Western European market, companies from countries beyond Germany, Belgium, and Italy will be informed about the mission and encouraged to meet with the U.S. participants.

The program will focus on several major areas, including, but not limited to, the following:

(1) Port safety and security, including container tagging, chemical and radiation detection equipment, electronic container seals, tracking equipment, virtual simulation products and other high-technology security items, and training (such as first responder);

(2) Port logistics and infrastructure, including supply chain, communications, crisis management, risk management products, disaster control shore-based electricity, inland connections, terminal railroad infrastructure, pipelines and other solutions for liquid bulk and petrochemical products;

(3) Port environment, including reduced emissions, clean engine developments and GreenPorts Certification; and

(4) European maritime policies.

The trade mission will expose participating companies to procurement opportunities in maritime ports and showcase U.S. technology, which is highly regarded and maintains a competitive edge in Europe.

#### **Commercial Setting**

As in other markets, Europe places a strong emphasis on homeland security, transportation, environmental safety and critical infrastructure development. The need for information exchange and security concerning the maritime industry continues to create opportunities in the maritime sector in Europe. Approximately 90 percent of the transport of goods to and from the European Union is by sea. The European Union has adopted rules regarding maritime safety and security to ensure quality shipping that respects the environment and guarantees an optimal level of protection. The current European maritime transport policy calls for safety and security measures that will allow the European maritime industry to continue making the most of its already prominent role to maximize its competitive position. The major focus is on environmental impact, safety, unification and simplification of procedures. This scenario will provide excellent opportunities for U.S. companies operating in a variety of areas.

End-users consider the U.S. security equipment industry to be a leader in the global marketplace. U.S. producers will continue to have a competitive advantage because of their know-how and technological edge. Solutions to be considered will include, among many other items, handheld scanners, pagers, portal monitors, radiation identification devices, cargo and baggage screening equipment, non-intrusive inspection technology, access control and identification systems, video surveillance equipment and communication software for data integration.

In European ports, a strong demand is developing for emissions-reducing technologies. This demand is triggered

mainly by European Union legislation pushing for important reductions in gaseous emissions, especially greenhouse gases, CO, NO<sub>x</sub> and SO<sub>x</sub>. The underlying political drivers are the EU's commitment to the Kyoto Protocol and its Clean Air For Europe (CAFE) program. As EU Member states have some freedom in the actual implementation of the EU legislation, and they will likely pass on the burden to execute the national emission-reduction targets to the port areas, which are notorious polluters. Key commercial leads will include any and all technologies that lead to higher energy efficiency of both onshore (port facilities and infrastructure) and offshore (vessels) equipment. Examples are shore-based electricity networks ("cold ironing"), exhaust filters for diesel engines and power plants, and low-sulfur fuels. As the legislative process is ongoing, companies interested in this area could benefit from developing relations with port authorities and other semi-public stakeholders as direct sources of information in the future.

#### **Mission Goals**

The trade mission's goal is to introduce U.S. exporters of port-related equipment, systems, and services to potential public and private end-users and partners, including potential agents, distributors, and licensees, with the aim of creating business partnerships that will contribute to increasing U.S. exports to European markets.

#### **Mission Scenario**

The mission will include meetings with individuals from both the public sector (e.g., port authorities and customs officials) and private business (e.g., shipping agents, marine terminal operators, and local security systems companies). In each country, participants will receive a briefing that will include market intelligence, as well as an overview of the country's economic and political environment. A networking reception is planned at each stop. The mission will also include a brief tour of the ports of Hamburg, Antwerp and Genoa, briefings by port authorities on planned projects and expected infrastructure and security needs, and one-on-one business meetings between U.S. participants and potential end-users and partners. Follow-on business meetings in other countries in the region can be set up before or after the trade mission for an additional price, depending on participants' wishes.

**Proposed Timetable**

The proposed schedule allows for about a day and a half in each port area.

Sunday, May 3, through Tuesday, May 5, 2009. Mission begins in Hamburg, Germany.

Welcome briefing.  
Business matchmaking: 1 full day of appointments.  
Tour of port.  
Networking reception.  
Participants will depart Hamburg the morning of Tuesday, May 5, by air, and proceed to Brussels, Belgium.

Tuesday, May 5, through Thursday, May 7 ..... Mission's second stop: Antwerp, Belgium (via mini-bus from Brussels).

Welcome briefing.  
Tour of port.  
Networking reception.  
Business matchmaking: 1 full day of appointments.  
The delegation will depart Belgium via Brussels the morning of May 7 and proceed to Milan, Italy.

Thursday, May 7, through Friday, May 8 ..... Mission's third and last stop: Genoa, Italy.

Welcome briefing.  
Business matchmaking: 1 full day of appointments.  
Tour of port.  
Networking reception.  
Participants are free to depart for their home destinations on the evening of May 8.

**Criteria for Participation and Selection**

A minimum of 8 and a maximum of 15 companies will be selected to participate in the mission from the applicant pool. The target participants will include U.S. companies specializing in security, infrastructure, environmental protection, and communications systems. As large European ports attract all sorts of industries, U.S. applicants with business interests in other sectors will also be considered.

**Fees and Expenses**

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee is \$3,000 per company for small or medium enterprises (SME \*) and \$3,700 per company for large firms. The fee for each additional firm representative (large firm or SME) is \$500 per person. Expenses for lodging, most transportation (except, for example, bus transportation to Antwerp, Belgium), most meals, and incidentals will be the responsibility of each mission participant.

\* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see [http://www.sba.gov/services/contracting\\_opportunities/sizestandardstoc/index.html](http://www.sba.gov/services/contracting_opportunities/sizestandardstoc/index.html)). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing schedule reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see <http://www.export.gov/newsletter/march2008/initiatives.html> for additional information).

**Conditions for Participation**

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

**Selection Criteria for Participation**

- Suitability of the company's products or services to the target sectors and markets;
- Applicant's potential for business in the target markets, including likelihood of exports resulting from the mission; and
- Relevance of the company's business line to the mission's goals.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

**Timeframe for Recruitment and Applications**

Mission recruitment will be conducted in an open and public manner. Outreach will include posting on the Commerce Department trade mission calendar <http://www.ita.doc.gov/doctm/tmcal.html> and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The U.S. Commercial Service offices in Italy, Germany and Belgium, in cooperation with port area U.S. Export Assistance Centers and the Global Safety and Security, Environmental, and Europe Teams will lead recruitment activities.

The mission will open on a first come first served basis. Recruitment will begin immediately and close March 16, 2009. Applications received after March 16, 2009, will be considered only if space and scheduling constraints permit. Interested U.S. firms may contact the mission project officer listed below or visit the mission Web site: [http://www.buyusa.gov/europe/security\\_events.html#\\_section2](http://www.buyusa.gov/europe/security_events.html#_section2).

Contacts:

Greg Thompson, Senior International Trade Specialist, e-mail: [greg.thompson@mail.doc.gov](mailto:greg.thompson@mail.doc.gov), U.S. Commercial Service, North Texas USEAC, Tel: 214-712-1932, Fax: 214-746-6799.

Maria Calabria, Commercial Specialist, e-mail: [maria.calabria@mail.doc.gov](mailto:maria.calabria@mail.doc.gov), U.S. Commercial Service Italy, Via Vittorio Veneto 119/A, 00187 Rome,

Italy, Tel: 011-39-06 4674 2427/2382,  
Fax: 011-39-06 4674 2113.

Dated: February 18, 2009.

**Greg Thompson,**

*Senior International Trade Specialist, U.S.  
Commercial Service, North Texas USEAC.*  
[FR Doc. E9-3951 Filed 2-24-09; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XN48

#### Fisheries of the Exclusive Economic Zone Off Alaska; Stock Assessment of Alaska Sablefish; Peer Review Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of peer review meeting.

**SUMMARY:** NMFS has requested the Center for Independent Experts (CIE) to conduct a peer review of the agency's stock assessment of Alaskan sablefish. CIE is a group affiliated with the University of Miami that provides independent peer reviews of NMFS science nationwide, including reviews of stock assessments for fish and marine mammals. The Alaska sablefish stock assessment is an area-wide model that includes the Gulf of Alaska, Bering Sea and the Aleutian Islands. The CIE review will examine whether the assessment incorporates the best available scientific information and provides a reasonable approach to understanding the population dynamics and stock status of sablefish in Alaska. The public is invited to attend and observe the presentations and discussions between the CIE panel and the NMFS scientists who collected and processed the data, and designed the underlying model.

**DATES:** The review will be held on March 17 through March 19, 2009, from 9 AM to 5 PM Alaska Daylight Time.

**ADDRESSES:** The review will be held at the NMFS Alaska Fisheries Science Center, Ted Stevens Marine Research Institute, 17109 Pt. Lena Loop Rd, Juneau, AK 99801.

**FOR FURTHER INFORMATION CONTACT:** Phillip Rigby, 907-789-6653.

**SUPPLEMENTARY INFORMATION:** The CIE panel will consist of three peer reviewers who will assess materials related to the topic, participate in a review workshop with the NMFS scientists who developed the model and the analytical approach, and produce a

report. This review will be highly technical in nature and will cover mathematical details of the analytical approach. Members of the public are invited to observe, and will be provided opportunities to contribute on March 17 and 19.

The final report is due on April 23, 2009, and will consist of individual reports from each panelist and a summary report. The meeting chair will present the results of the review during the September 2009 North Pacific Fishery Management Council's Groundfish Plan Team meeting that will be announced at a later time in the **Federal Register**.

#### SPECIAL ACCOMMODATIONS

These workshops will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Phillip Rigby, 907-789-6653, at least 10 working days prior to the meeting date.

Dated: February 19, 2009.

**James P. Burgess**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E9-4022 Filed 2-24-09; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DoD-2009-HA-0027]

#### Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant Secretary of Defense for Health Affairs, DoD.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use

of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 27, 2009.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041-3206 (703 681-0039).

*Title; Associated Form; and OMB Number:* Federal Agency Retail Pharmacy Program; OMB Number 0720-0032.

*Needs and Uses:* The Department of Defense is extending the information collection requirements under current OMB control number 0720-0032. Specifically, under the collection of information, respondents (drug manufacturers) will base refund calculation reporting requirements on both the Federal Ceiling Price and the Federal Supply Schedule Price, whichever is lower. Previously, drug manufacturers' reporting requirements addressed only the Federal Ceiling Price. DoD will use the reporting and audit capabilities of the Pharmacy Data Transaction Service (PDTS) to validate refunds owed to the Government.

*Affected Public:* Business or other for-profit.

*Annual Burden Hours:* 16,000.

*Number of Respondents:* 250.

*Responses per Respondent:* 8.

*Average Burden per Response:* 8 hours.

*Frequency:* On occasion.

#### SUPPLEMENTARY INFORMATION:

##### Summary of Information Collection

The Department of Defense is extending the information collection

requirements under current OMB control number 0720-0032. Specifically, under the collection of information, respondents (drug manufacturers) will base refund calculation reporting requirements on both the Federal Ceiling Price and the Federal Supply Schedule Price, whichever is lower. Previously, drug manufacturers' reporting requirements addressed only the Federal Ceiling Price. DoD will use the reporting and audit capabilities of the Pharmacy Data Transaction Service (PDTs) to validate refunds owed to the Government.

Dated: February 19, 2009.

**Patricia L. Toppings,**  
OSD Federal Register Liaison Officer,  
Department of Defense.

[FR Doc. E9-4015 Filed 2-24-09; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket No. DoD-2009-DARS-0026]

#### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by March 27, 2009.

**Title and OMB Number:** Information Collection in Support of the DoD Acquisition Process (Miscellaneous Requirements) (Defense Federal Acquisition Regulation Supplement (DFARS) Parts 208, 209, 226, and 235 and associated clauses in Part 252); OMB Control Number 0704-0187.

**Type of Request:** Extension.

**Number of Respondents:** 698.

**Responses per Respondent:** 1.81.

**Annual Responses:** 1,260.

**Average Burden per Response:** 1.46 hours.

**Annual Burden Hours:** 1,845.

**Needs and Uses:** This information collection requirement pertains to information required by DFARS Parts 208, 209, 226, and 235 and associated clauses in Part 252, that an offeror must submit to DoD with regard to a solicitation or contract requirement.

DoD uses this information to:

- Determine whether to provide precious metals as Government furnished material.

- Determine an entity's eligibility for award of a contract under a national security program.

- Determine whether there is a compelling reason for a contractor to enter into a subcontract with a firm, or subsidiary of a firm, that is identified in the List of Parties Excluded from Federal Procurement and Non-procurement Programs as being ineligible for award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

- Verify the status of an offeror as a historically black college or university (HBCU) or minority institution (MI) in order to determine whether the offeror is eligible for award under a HBCU/MI set-aside.

- Evaluate claims of indemnification for loss or damage occurring under a research and development contract.

- Keep track of radio frequencies for electronic equipment under research and development contracts, so that the user does not interfere with other use of the same frequency.

**Affected Public:** Business or other for-profit; not-for-profit institutions.

**Frequency:** On Occasion.

**Respondent's Obligation:** Required to obtain or retain benefits.

**OMB Desk Officer:** Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**DOD Clearance Officer:** Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209-2133.

Dated: February 19, 2009.

**Patricia L. Toppings,**  
OSD Federal Register Liaison Officer,  
Department of Defense.

[FR Doc. E9-4040 Filed 2-24-09; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Department of the Army

[Docket ID: USA-2009-0008]

#### Proposed Collection; Comment Request

**AGENCY:** Office of the Administrative Assistant to the Secretary of the Army, (OAA-RPA), DoD.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Department of the Army announces a proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 27, 2009.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Mail:** Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

**Instructions:** All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this

proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Department of the Army, Military Surface Deployment and Distribution Command, 661 Sheppard Place, Ft. Eustis, VA 23604, ATTN: (Richard Cody), or call Department of the Army Reports clearance officer at (703) 428-6440.

*Title, Associated Form, and OMB Number:* Department of Defense Standard Tender of Freight Services, SDDC Form 364-R, OMB Control Number 0702-0261.

*Needs and Uses:* The information derived from the DoD tenders on file with the Military Surface Deployment and Distribution Command (SDDC) is used by SDDC subordinate commands and DoD shippers to select the best value carriers to transport surface freight shipments. Freight carriers furnish information in a uniform format so that the Government can determine the cost of transportation, accessorial, and security services, and select the best value carriers for 1.1 million Bill of Lading shipments annually. The DoD tender is the source document for the General Services Administration post-shipment audit of carrier freight bills.

*Affected Public:* Business or other for-profit.

*Annual Burden Hours:* 5,391.

*Number of Respondents:* 434.

*Responses per Respondent:* 50.

*Average Burden per Response:* 15 minutes.

*Frequency:* On occasion.

#### SUPPLEMENTARY INFORMATION:

##### Summary of Information Collection

The DoD tender format was developed to take advantage of improved information collection technology and to connect with ongoing initiatives to implement automated systems to file tenders, select carriers, quote rates, and audits. The disciplined data fields of the tenders will facilitate the Electronic Data Interchange of tender data between carriers and SDDC, also between SDDC subordinate commands and DoD shippers. This initiative ultimately will permit electronic filing of the tender and eliminate mailing paper documents, which are manually processed.

Dated: February 19, 2009.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

[FR Doc. E9-4014 Filed 2-24-09; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Department of the Army

[Docket ID: USA-2008-0078]

#### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by March 27, 2009.

*Title, Form, and OMB Number:* Transportation Discrepancy Report; DD Form 361; OMB Control Number 0702-0124.

*Type of Request:* Extension.

*Number of Respondents:* 1,434.

*Responses per Respondent:* 1.

*Annual Responses:* 1,434.

*Average Burden per Response:* 1 hour.

*Annual Burden Hours:* 1,434.

*Needs and Uses:* DD Form 361 is essential for documenting any loss, damage, or other discrepancy, which may result from the movement of Government freight by commercial transportation companies (carriers). The form is ordinarily completed by the Federal agencies for which the transportation service is provided. However, in a small minority of cases (Approximately 9%), contractor personnel acting for the government may be required to complete this form.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. You may also submit comments, identified by docket number and title, by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any

personal identifiers or contact information.

*DoD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209-2133.

Dated: February 19, 2009.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

[FR Doc. E9-4019 Filed 2-24-09; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Notice of Additional Public Hearing and Extension of Comment Period for the Draft Environmental Impact Statement/Overseas Environmental Impact Statement for the Northwest Training Range Complex

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** A notice of availability (NOA) was published by the U.S. Environmental Protection Agency in the **Federal Register** (73 FR 79473) on December 29, 2008, for the Northwest Training Range Complex (NWTRC) Draft Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS). A notice of public hearing dates and locations was published in the **Federal Register** (73 FR 79856) on December 30, 2008. This notice announces an additional public hearing in Oregon and extension of the public comment period until March 11, 2009. The comment period was previously extended from February 11, 2009 to February 18, 2009 [notice published February 11, 2009 (74 FR 6859); amended NOA published February 13, 2009 (74 FR 7230)].

*Dates and Addresses:* A public hearing has been scheduled for February 26, 2009, at the Tillamook County Fairgrounds Auditorium, 4603 East 3rd Street, Tillamook, Oregon, to receive oral and written comments on the Draft EIS/OEIS. The meeting will start with an open house session from 5 p.m. to 7 p.m., followed by a presentation and formal public comment period from 7 p.m. to 8:30 p.m. The open house session will allow interested individuals to review information presented in the Draft EIS/OEIS. Navy representatives will be available during the open house

session to clarify information related to the Draft EIS/OEIS.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Kimberly Kler, Naval Facilities Engineering Command Northwest, Attention: NWTRC EIS/OEIS, 1101 Tautog Circle, Suite 203, Silverdale, Washington, 98315-1101; or <http://www.NWTRangeComplexEIS.com>.

**SUPPLEMENTARY INFORMATION:** Federal, State, and local agencies, and interested parties are invited to be present or represented at the public hearing. Written comments can also be submitted during the open house session preceding the public hearing.

Oral statements will be heard and transcribed by a stenographer; however, to ensure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on the Draft EIS/OEIS and will be responded to in the Final EIS/OEIS. Equal weight will be given to both oral and written statements. In the interest of available time, and to ensure all who wish to give an oral statement have the opportunity to do so, each speaker's comments will be limited to four (4) minutes. If a long statement is to be presented, it should be summarized at the public hearing with the full text submitted either in writing at the hearing, or mailed to Naval Facilities Engineering Command Northwest, Attention: Mrs. Kimberly Kler—NWTRC EIS/OEIS, 1101 Tautog Circle, Suite 203, Silverdale, WA, 98315-1101. In addition, comments may be submitted online at <http://www.NWTRangeComplexEIS.com> during the comment period. All written comments must be postmarked by March 11, 2009, to ensure they become part of the official record. All comments will be addressed in the Final EIS/OEIS.

Copies of the Draft EIS/OEIS are available for public review at the following libraries:

1. Newport Public Library, 35 NW Ney Street, Newport, OR;
2. Tillamook County Library, 1716 3rd Street, Tillamook, OR;
3. Suislaw Public Library, 1460 9th Street, Florence, OR;
4. Driftwood Public Library, 801 SW Highway 101, Lincoln City, OR;
5. Humboldt County Library, 1313 Third Street, Eureka, CA;
6. Jefferson County Rural Library, 620 Cedar Avenue, Port Hadlock, WA;
7. Kitsap Regional Library, 1301 Sylvan Way, Bremerton, WA;
8. Oak Harbor Public Library, 1000 SE Regatta Drive, Oak Harbor, WA;
9. Port Townsend Public Library, 1220 Lawrence St., Port Townsend, WA;

10. Timberland Regional Library, 420 Seventh Street, Hoquiam, WA.

The NWTRC Draft EIS/OEIS is also available for electronic public viewing at: <http://www.NWTRangeComplexEIS.com>.

Dated: February 20, 2009.

**A. M. Vallandingham,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. E9-4042 Filed 2-24-09; 8:45 am]

**BILLING CODE 3810-FF-P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 27, 2009.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper

functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 19, 2009.

**Angela C. Arrington,**

*Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.*

### Federal Student Aid

*Type of Review:* Revision.

*Title:* Federal Family Education Loan (FFEL) Deferment Request Forms.

*Frequency:* On occasion.

*Affected Public:* Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 2,399,196.

*Burden Hours:* 383,871.

*Abstract:* These forms serve as the means by which borrowers in the FFEL Program may request deferment of repayment on their loans if they meet certain statutory and regulatory eligibility requirements. The holders of a borrower's FFEL Program loans use the information collected on these forms to determine whether a borrower meets the eligibility requirements for the specific deferment type that the borrower has requested.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3916. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E9-3986 Filed 2-24-09; 8:45 am]

**BILLING CODE 4000-01-P**

**DEPARTMENT OF EDUCATION****Submission for OMB Review;  
Comment Request**

**AGENCY:** Department of Education.

**SUMMARY:** The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before March 27, 2009.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 19, 2009.

**Angela C. Arrington,**  
*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

**Federal Student Aid**

*Type of Review:* Revision.

*Title:* William D. Ford Federal Direct Loan Program: Deferment Request Forms.

*Frequency:* On occasion.

*Affected Public:* Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

Responses: 737,209.

Burden Hours: 117,953.

*Abstract:* These forms serve as the means by which borrowers in the Direct Loan Program may request deferment of repayment on their loans if they meet certain statutory and regulatory eligibility requirements. The U.S. Department of Education uses the information collected on these forms to determine whether a borrower meets the eligibility requirements for the specific deferment types that the borrower has requested.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3919. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to the Internet address [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E9-3987 Filed 2-24-09; 8:45 am]

**BILLING CODE 4000-01-P**

**DEPARTMENT OF EDUCATION****Submission for OMB Review;  
Comment Request**

**AGENCY:** Department of Education.

**SUMMARY:** The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before March 27, 2009.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 19, 2009.

**Angela C. Arrington,**  
*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

**Office of Postsecondary Education**

*Type of Review:* Reinstatement.

*Title:* Title V Developing Hispanic-Serving Institutions Application.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

Responses: 100.

Burden Hours: 5,550.

*Abstract:* Collection of the information is necessary so that the Secretary of Education can carry out the Hispanic-Serving Institutions program under Title V, Part A of the Higher Education Act of 1965, as amended. The information will be used in the evaluation process to determine whether proposed activities are

consistent with legislated activities and to determine the dollar share of the Congressional appropriation to be awarded to successful applicants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894-0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3958. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to the Internet address [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E9-3994 Filed 2-24-09; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF ENERGY

[OE Docket No. EA-349]

### Application To Export Electric Energy; Bruce Power Inc.

**AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Bruce Power Inc. has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests, or requests to intervene must be submitted on or before March 27, 2009.

**ADDRESSES:** Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE-20, U.S. Department of Energy, 1000 Independence Avenue, SW.,

Washington, DC 20585-0350 (FAX 202-586-8008).

#### FOR FURTHER INFORMATION CONTACT:

Ellen Russell (Program Office) 202-586-9624 or Michael Skinker (Program Attorney) 202-586-2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On February 3, 2009, DOE received an application from Bruce Power Inc. for authority to transmit electric energy from the United States to Canada as a power marketer using international transmission facilities located at the United States border with Canada. Bruce Power Inc. is incorporated under the *Business Corporations Act* (Ontario) and has its principal place of business in Tiverton, Ontario, Canada. Bruce Power Inc. does not own any electric transmission facilities nor does it hold a franchised service area. The electric energy which Bruce Power Inc. proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. Bruce Power Inc. has requested an electricity export authorization with a 5-year term.

Bruce Power Inc. will arrange for the delivery of exports to Canada over the international transmission facilities owned by Bangor Hydro-Electric Company, Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, Vermont Electric Power Company, and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Bruce Power Inc. have previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

**Procedural Matters:** Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address

provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Bruce Power Inc. application to export electric energy to Canada should be clearly marked with Docket No. EA-349. Additional copies are to be filed directly with Richard Horrobin, Vice President of Power Marketing, Bruce Power L.P., 177 Tie Road, R.R. #2, P.O. Box 1540, Building B10, Tiverton, ON N0G 2T0 AND Brian Armstrong, Executive Vice President & General Counsel, Bruce Power L.P., 177 Tie Road, R.R. #2, P.O. Box 1540, Building B10, Tiverton, ON N0G 2T0. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at [http://www.oe.energy.gov/permits\\_pending.htm](http://www.oe.energy.gov/permits_pending.htm), or by e-mailing Odessa Hopkins at [Odessa.hopkins@hq.doe.gov](mailto:Odessa.hopkins@hq.doe.gov).

Issued in Washington, DC, on February 18, 2009.

**Anthony J. Como,**

*Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. E9-4051 Filed 2-24-09; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

[OE Docket No. PP-334]

### Notice of Intent To Prepare an Environmental Impact Statement; Energia Sierra Juarez U.S. Transmission, LLC

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of Intent to Prepare an Environmental Impact Statement (EIS).

**SUMMARY:** The Department of Energy (DOE) announces its intention to prepare an EIS on the proposed Federal action of granting a Presidential permit to construct a new electric transmission line across the U.S.-Mexico border in southeastern California. DOE has determined that issuance of a Presidential permit for the proposed

project would constitute a major Federal action that may have a significant effect upon the environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). For this reason, DOE intends to prepare an EIS entitled *Energia Sierra Juarez Transmission Line Environmental Impact Statement* (DOE/EIS-0414) to address potential environmental impacts from the proposed action and reasonable alternatives. The EIS will be prepared in compliance with NEPA and applicable regulations, including DOE NEPA implementing regulations at 10 CFR Part 1021. Because of previous public participation activities, DOE does not plan to conduct additional scoping meetings for this EIS. However, any timely written comments submitted will be considered by DOE in determining the scope of the EIS.

**DATES:** As discussed below, the public participation process that DOE conducted following publication of a notice of intent to prepare an environmental assessment will serve as the scoping for this EIS. DOE will consider any additional comments received or postmarked by March 27, 2009 in defining the scope of the EIS. Comments received or postmarked after that date will be considered to the extent practicable.

**ADDRESSES:** Comments on the scope of the EIS and requests to be added to the document mailing list should be addressed to: Dr. Jerry Pell, Office of Electricity Delivery and Energy Reliability (OE-20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; by electronic mail to [Jerry.Pell@hq.doe.gov](mailto:Jerry.Pell@hq.doe.gov); or by facsimile to 202-318-7761.

For general information on the DOE NEPA process contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC-20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; or by facsimile at 202-586-7031.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jerry Pell, 202-586-3362, or [Jerry.Pell@hq.doe.gov](mailto:Jerry.Pell@hq.doe.gov). For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom at 202-586-4600 or leave a message at 800-472-2756.

**SUPPLEMENTARY INFORMATION:** Executive Order (EO) 10485, as amended by EO 12038, requires that a Presidential permit be issued by DOE before electric transmission facilities may be constructed, operated, maintained, or connected at the U.S. international border. The EO provides that a Presidential permit may be issued after

a finding that the proposed project is consistent with the public interest and after favorable recommendations from the U.S. Departments of State and Defense. In determining consistency with the public interest, DOE considers the environmental impacts of the proposed project under NEPA, determines the project's impact on electric reliability (including whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions), and considers any other factors that DOE may find relevant to the public interest. The regulations implementing the EO have been codified at 10 CFR 205.320–205.329. DOE's issuance of a Presidential permit indicates that there is no Federal objection to the project, but does not mandate that the project be undertaken.

Energia Sierra Juarez U.S. Transmission, LLC (ESJ, formerly Baja Wind U.S. Transmission, LLC), has applied to DOE's Office of Electricity Delivery and Energy Reliability (OE) for a Presidential permit to construct either a double-circuit 230,000-volt (230-kV) or a single-circuit 500-kV transmission line on either lattice towers or steel monopoles. ESJ's proposed transmission line would connect wind turbines (the La Rumorosa Project) to be located in the vicinity of La Rumorosa, Baja California, Mexico, to the existing Southwest Powerlink (SWPL) 500-kV transmission line. The ESJ Presidential permit application, including associated maps and drawings, can be downloaded in its entirety from the DOE program Web site at [http://www.oenergy.gov/permits\\_pending.htm](http://www.oenergy.gov/permits_pending.htm) (see PP-334).

One portion of the proposed transmission project would consist of two miles of transmission located in Mexico that would be constructed, owned, operated, and maintained by a subsidiary of Sempra Energy Mexico and would be subject to the permitting requirements of the Mexican Government. The remaining portion of the proposed transmission project would consist of a one-mile transmission line constructed by ESJ within the United States on private land. The entire electrical output of the La Rumorosa Project (1250 megawatts) would be dedicated to the U.S. market and delivered using the proposed international transmission line. For reasons discussed below, the EIS will consider only impacts that occur inside the United States.

ESJ's proposed transmission line would connect to a substation to be constructed by the San Diego Gas & Electric Company in response to

requests by power suppliers to connect to the SWPL. The substation, to be known as the East County Substation, would be located just south of the SWPL right-of-way near the community of Jacumba, California, and would contain equipment for accepting interconnections at both the 230-kV and the 500-kV level. The 230-kV connection equipment would be located just to the west of the 500-kV connection equipment, both within the confines of the substation boundary. Accordingly, ESJ has identified two routing/voltage alternatives to coincide with interconnection at the 230-kV or at the 500-kV level.

### Agency Purpose and Need, Proposed Action, and Alternatives

The purpose and need for DOE's action is to decide whether to grant ESJ's application for a Presidential permit for the proposed international electric transmission line. DOE's proposed action is to issue a Presidential permit for the construction, operation, maintenance, and connection of the proposed international electric transmission line. If granted, the Presidential permit would authorize only the one-mile portion of the applicant's proposal that would be constructed and operated wholly within the United States.

Both of ESJ's proposed route alternatives would cross the U.S.-Mexico border at the same location. However, the route alternative identified as A1 in the Presidential permit application would be constructed at 500-kV and would be the eastern alternative; the other route alternative, identified as A2, would be constructed at 230-kV and be located to the west of the A1 alternative. Both alternatives would be located wholly within private property in eastern San Diego County near the unincorporated community of Jacumba. In addition to the alternatives proposed by ESJ, DOE will also consider the environmental impacts of a "No Action" alternative.

DOE originally considered an environmental assessment (EA) (to be titled *Baja Wind U.S. Transmission Environmental Assessment*) to be the appropriate level of review under NEPA. DOE published a Notice of Intent to Prepare an Environmental Assessment and to Conduct Public Scoping Meetings in the **Federal Register** on August 4, 2008 (73 FR 45218). In that notice DOE stated "if at any time during preparation of the EA DOE determines that an environmental impact statement (EIS) is needed \* \* \* DOE will consider any comments on the scope of the EA received during [the EA

scoping process] in preparing such an EIS.”

### Identification of Environmental Issues

When publishing its notice of intent to prepare an EA on August 4, 2008, DOE opened a 30-day scoping period during which the public was invited to participate in the identification of potential environmental impacts that may result from construction of the ESJ transmission line project and reasonable alternatives. DOE conducted two scoping meetings in Jacumba. Nine issues and concerns were identified as a result of the scoping opportunity. These issues and concerns are (1) visual impacts, (2) avian mortality, (3) impacts to protected, threatened, endangered, or sensitive species of animals or plants, or their critical habitats, (4) impacts to cultural or historic resources, (6) impacts to human health and safety, (6) impacts to air, soil, and water, (7) land use impacts, (8) impacts of seismic activity, and (9) impacts from development of wind generation. In the EIS DOE will analyze these issues and others it finds appropriate to address, such as greenhouse gas emissions and global climate change and also intentional destructive acts, such as terrorism. No additional construction or routing alternatives were proposed as a result of the scoping process.

Several commenters in this proceeding have asked DOE to evaluate the impacts associated with activities that will occur inside Mexico (e.g., from the construction and operation in Mexico of the wind generators). NEPA does not require an analysis of environmental impacts that occur within another sovereign nation that result from approved actions by that nation. The EIS, however, will evaluate all relevant environmental impacts within the U.S. related to or caused by project-related activities in Mexico.

Based on comments received during the initial EA process, and the potential for public controversy, DOE has determined an EIS to be the proper NEPA compliance document.

### EIS Preparation and Schedule

In preparing the Draft EIS, DOE will consider comments received during the scoping period. Because of previous public participation activities, DOE does not plan to conduct additional scoping meetings for this EIS. However, any timely additional written comments submitted will be considered by DOE in determining the scope of the EIS.

DOE anticipates issuing a Draft EIS in the fall of 2009. DOE will provide a public comment period of at least 45 days from the Environmental Protection

Agency's (EPA's) Notice of Availability (NOA) of the Draft EIS and will hold at least one public hearing during the public comment period.

DOE will include all comments received on the Draft EIS, and responses to those comments, in the Final EIS. DOE will issue a Record of Decision no sooner than 30 days from EPA's NOA of the Final EIS.

Persons who submitted comments during the scoping process will receive a copy of the Draft EIS. Other persons who would like to receive a copy of the document for review when it is issued should notify Dr. Jerry Pell at the address provided above.

Issued in Washington, DC, on February 18, 2009.

**Patricia A. Hoffman,**

*Acting Assistant Secretary, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. E9-4049 Filed 2-24-09; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12619-002; Project No. 13363-000; Project No. 13364-000; Project No. 13366-000]**

### **Cascade Creek, LLC; City and Borough of Wrangell, AK; Petersburg Municipal Power and Light; City of Angoon, AK; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications**

February 18, 2009.

Cascade Creek, LLC (Cascade), City and Borough of Wrangell, Alaska (Wrangell), Petersburg Municipal Power and Light (Petersburg) and the City of Angoon, Alaska filed applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Ruth Lake Project, to be located on Ruth Lake and Delta Creek, in an unorganized Borough near Petersburg, Alaska. There are no existing facilities. The project would be located in the Tongass National Forest. All of these applications were filed electronically and given the filing date of February 3, 2009, at 8:30 a.m.

#### *The proposed Ruth Lake Projects:*

The proposed Ruth Lake Project by Cascade Creek, LLC for Project No. 12619-002 filed on February 3, 2009 at 8:30 a.m. would consist of: (1) A proposed 170-foot-high concrete arch dam at the exit of the natural Ruth Lake; (2) an existing reservoir having a surface area of 130 acres and a storage capacity

of 17,000 acre-feet and normal water surface elevation of 1,527 feet mean sea level (msl); (3) a proposed 12,600-foot-long, 6 to 12-inch diameter combination bored tunnel and steel penstock; (4) a proposed powerhouse containing three new generating units having an installed capacity of 20 megawatts; (5) an existing 20-mile-long, 138 kilovolt transmission line; and (6) appurtenant facilities. The proposed Ruth Lake Project would have an average annual generation of 70 gigawatt-hours. Cascade is also exploring alternatives that would connect this project to their Cascade Creek Project, which they have preliminary permit for FERC No. 12495.

The proposed Ruth Lake Project by City and Borough of Wrangell, Alaska for Project No. 13363-000 filed on February 3, 2009 at 8:30 a.m. would consist of: (1) A proposed 170-foot-high concrete arch dam at the exit of the natural Ruth Lake; (2) an existing reservoir having a surface area of 130 acres and a storage capacity of 17,000 acre-feet and normal water surface elevation of 1,527 feet mean sea level (msl); (3) a proposed 12,600-foot-long, 6 to 12-foot diameter combination bored tunnel and steel penstock; (4) a proposed powerhouse containing three new generating units having an installed capacity of 20 megawatts; (5) an existing 20-mile-long, 138 kilovolt transmission line; and (6) appurtenant facilities. The proposed Ruth Lake Project would have an average annual generation of 70 gigawatt-hours.

The proposed Ruth Lake Project by Petersburg Municipal Power and Light for Project No. 13363-000 filed on February 3, 2009 at 8:30 a.m. would consist of: (1) A proposed 200-foot-high concrete faced rockfill dam at the exit of the natural Ruth Lake; (2) an existing reservoir having a surface area of 190 acres and a storage capacity of 17,000 acre-feet and normal water surface elevation of 1,560 feet mean sea level (msl); (3) a proposed 3,500-foot-long, 10-foot diameter tunnel and a 7,800-foot-long, 6-foot-diameter steel penstock; (4) a proposed powerhouse containing three new generating units having an installed capacity of 20 megawatts; (5) would connect directly to their distribution system; and (6) appurtenant facilities. The proposed Ruth Lake Project would have an average annual generation of 70 gigawatt-hours.

The proposed Ruth Lake Project by City of Angoon, Alaska for Project No. 13366-000 filed on February 3, 2009 at 8:30 a.m. would consist of: (1) A proposed 170-foot-high concrete arched dam at the exit of the natural Ruth Lake; (2) an existing reservoir having a surface area of 130 acres and a storage capacity

of 17,000 acre-feet and normal water surface elevation of 1,527 feet mean sea level (msl); (3) a proposed 3,600-foot-long, 6 to 12-inch diameter combination bored tunnel and steel penstock; (4) a proposed powerhouse containing three new generating units having an installed capacity of 20 megawatts; (4) an existing 20-mile-long, 138 kilovolt transmission line; and (5) appurtenant facilities. The proposed Ruth Lake Project would have an average annual generation of 70 gigawatt-hours.

**Applicants Contact:** For Cascade Creek, LLC: Mr. Chris Spears, Cascade Creek, LLC, 3633 Alderwood Avenue, Bellingham, WA 98225, (360) 738-9999. For City and Borough of Wrangell, Alaska: Mr. Warren Edgley, City and Borough of Wrangell, Alaska, P.O. Box 531, Wrangell, AK 99929, (907) 874-2381. For Petersburg Municipal Electric & Light: Mr. Joe Nelson, Superintendent, Petersburg Municipal Electric & Light, P.O. Box 329, 11 South Nordic, Petersburg, AK 99833, (907) 772-4203. For the City of Angoon, Alaska: Mayor, Albert Howard, City of Angoon, Alaska, P.O. Box 189, Angoon, AK 99820, (907) 788-3653.

**FERC Contact:** Robert Bell, (202) 502-6062.

**Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:** 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on the "eLibrary" link of the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-12619-002, 13363-000, 13364, or P-13366) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E9-3971 Filed 2-24-09; 8:45 am]

BILLING CODE 6717-01-P

## FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. CP09-59-000]

### Dominion Cove Point LNG, LP; Notice of Application

February 18, 2009.

Take notice that on February 3, 2009, as supplemented on February 12, 2009, Dominion Cove Point LNG, LP (Cove Point) with a principal place of business at 120 Tredegar Street, Richmond, VA, filed with the Federal Energy Regulatory Commission an application under Section 3 of the Natural Gas Act seeking authorization to construct, install, own, operate and maintain a new compressor to be used to compress boil-off gas from the vapor system up to pipeline pressure prior to entering the Cove Point Pipeline at Dominion's Cove Point LNG Terminal located in Calvert County, Maryland.

Cove Point's proposal is more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this application should be directed to Amanda K. Prestage, Regulatory and Certificates Analyst II, Dominion Transmission, Inc., 701 East Cary Street, Richmond, VA 23219, telephone: (804) 771-4416, fax: (804) 771-4804.

Cove Point says that the purpose of the boil-off compressor project is to increase Cove Point's capability to compress vapor for send-out through its natural gas pipeline facilities. This capability is important during periods of low send-out from the LNG Terminal. When LNG is routinely being vaporized in the normal course of business, boil off vapor is consumed as fuel to operate terminal equipment, and does not accumulate within the plant. However, when vaporization is not occurring on a regular basis, boil off can cause pressures within the LNG storage tanks to increase.

The boil-off compressor project will be composed of one 3,500-horsepower electric motor driven reciprocating compressor unit and related facilities, all of which will be constructed within the existing LNG Terminal site. The

estimated cost of the boil-off compressor project facilities is about \$ 8 million. Cove Point anticipates that these costs will be allocated to LNG import services, and will be collected in rates (1) through negotiations in accordance with the Commission's Hackberry policy as codified in EPAct 2005, and/or (2) through the normal course of future rate proceedings (such as the next general rate case that is to be filed not later than 2011). Cove Point does not seek to establish an initial rate applicable to the boil-off compressor project at this time. Nor is Cove Point seeking a pre-determination of rolled-in rate treatment for the costs of this project. Cove Point says that no changes to the rates for any existing services are proposed at this time.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice, the Commission staff will either: complete the environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the

proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

*Comment Date:* March 10, 2009.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9-3967 Filed 2-24-09; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. CP09-60-000; PF08-20-000]

#### Dominion Cove Point LNG, LP; Notice of Application

February 18, 2009.

Take notice that on February 4, 2009, Dominion Cove Point LNG, LP (Cove Point) with a principal place of business at 120 Tredegar Street, Richmond, VA, filed with the Federal Energy Regulatory Commission an application under section 3 of the Natural Gas Act seeking authorization to upgrade, modify, and expand the existing offshore pier at Cove Point's LNG Terminal located in Calvert County, Maryland. Cove Point says that these proposed facilities will enable the safe docking, discharge and departure from the pier of next-generation LNG vessels that are now coming into service worldwide.

Cove Point's proposal is more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at [FERCOnline.Support@ferc.gov](mailto:FERCOnline.Support@ferc.gov) or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this Application should be directed to Amanda K. Prestage, Regulatory and Certificates Analyst II, Dominion Transmission, Inc., 701 East Cary Street, Richmond, VA 23219, telephone: (804) 771-4416, fax: (804) 771-4804.

Cove Point says that its Pier Reinforcement Project would consist of the following components to be constructed at or adjacent to the existing offshore pier at the Cove Point LNG Terminal:

- Installation of ten new mooring dolphins;
- Reinforcement of eight existing breasting dolphins;
- Construction of new walkways at each end of the pier;
- Replacement of the existing gangways and service cranes with new automated gangways on platforms;
- Installation of new display boards;
- Upgrading of the docking control system with new quick-release mooring hooks;

- Dredging the channelward side of the pier to accommodate deeper draft vessels; and
- Placing the dredged material at a permitted dredged material placement site.

Cove Point says that the cost of the Pier Reinforcement Project is about \$51.1 million and that it is proposing to provide an optional incremental service under Rate Schedules LTD-1 and LTD-2 to shippers utilizing these proposed Incremental Port Facilities. Under Cove Point's current tariff limit, it limits the receipt of vessels at its LNG Terminal to a capacity of no greater than 148,000 cubic meters of LNG. The proposed modifications to the pier would allow Cove Point to receive vessels carrying cargoes of up to 267,000 cubic meters of LNG. Cove Point proposes three options for its import shippers to contract for this incremental service which are explained in more detail in its application, along with applicable proposed revisions to its tariff. One of these options includes a cost-based recourse rate and Cove Point provided details to support the proposed calculation of this recourse rate in its filing.

Cove Point says that this proposal will not involve an increase in the amount of LNG delivered to the LNG Terminal, the amount of storage capacity, or the amount of vaporized LNG sent out from the LNG Terminal over the levels authorized by the Commission in the Cove Point Expansion Project.

On May 21, 2008, the Commission staff granted Cove Point's request to utilize the FERC Pre-Filing Process and assigned Docket No. PF08-20-000 to staff activities involved in the Pier Reinforcement Project. Now as of the filing of Cove Point's application on February 4, 2009, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP09-60-000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice, the Commission staff will either: complete the environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental

Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentators will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentators will not be required to serve copies of filed documents on all other parties. However, the non-party commentators will not receive copies of all documents filed by other parties or issued by the

Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

*Comment Date:* March 10, 2009.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-3973 Filed 2-24-09; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2503-133]

#### Duke Energy Carolinas, LLC; Notice of Application To Amend License and Soliciting Comments, Motions To Intervene, and Protests

February 18, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Shoreline Management Plan.
- b. *Project No:* 2503-133.
- c. *Date Filed:* December 2, 2008.
- d. *Applicant:* Duke Energy Carolinas, LLC.
- e. *Name of Project:* Keowee-Toxaway Project.
- f. *Location:* Lake Jocassee is located in Pickens and Oconee County, South Carolina, and Transylvania County, North Carolina. This project does not occupy any tribal or federal lands.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.
- h. *Applicant Contact:* Mr. Kelvin K. Reagan, Senior Lake Services Representative; Duke Energy Carolinas, LLC; P.O. Box 1006; Charlotte, NC; 28201-1006; 704-382-9386.
- i. *FERC Contact:* Any questions on this notice should be addressed to Jade Alvey, Telephone (202) 502-6849, and e-mail: [Jade.Alvey@ferc.gov](mailto:Jade.Alvey@ferc.gov).
- j. *Deadline for filing comments, motions to intervene, and protest:* March 18, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* Duke Energy Carolinas, LLC (Duke), licensee for the Keowee-Toxaway Hydroelectric Project, has filed a proposed comprehensive shoreline management plan for Lake Jocassee, one of two reservoirs of the Keowee-Toxaway Project. Duke developed the plan to address continued public and private access to the project, including the construction and utilization of lake access facilities along the 92.4 miles of shoreline. The proposed plan includes provisions for recreation use and needs, land use classifications, lake use restrictions, permitting programs, shoreline stabilization, and shoreline management guidelines.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and

Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments*: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-3972 Filed 2-24-09; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP98-150-013]

#### Millennium Pipeline Company, L.L.C.; Notice of Application

February 18, 2009.

Take notice that on February 11, 2009, Millennium Pipeline Company, L.L.C. (Millennium) One Blue Hill Plaza, Seventh Floor, P.O. Box 1565, Pearl River, New York 10965 filed, pursuant to section 7(c) of the Natural Gas Act, an application to amend its certificate issued in Docket No. CP98-150. Millennium proposes to amend its certificate to authorize the lease and leaseback agreement it has entered into with the Industrial Development Agency of the County of Steuben, New York, in order to obtain partial abatement of state property taxes and other tax relief. This filing is available

for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Any questions regarding this Application should be directed to Daniel F. Collins or Letitia W. McKoy, Fulbright & Jaworski, L.L.P., 801 Pennsylvania Avenue, Washington, DC 20004, at (202) 662-4586 (Daniel) or (202) 662-4668 (Letitia) or by fax at (202) 662-4643.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the

proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

*Comment Date*: March 11, 2009.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-3968 Filed 2-24-09; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

February 18, 2009.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC09–55–000.

*Applicants:* Orange and Rockland Utilities, Inc.

*Description:* Application of Orange and Rockland Utilities under Section 203 for order authorizing the purchase of short-term debt of Rockland Electric Company not in excess of \$30 million.

*Filed Date:* 02/10/2009.

*Accession Number:* 20090210–5119.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 3, 2009.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER00–586–007.

*Applicants:* Madison Gas & Electric Company

*Description:* Madison Gas and Electric Co submits its Market-Based Power Sales Tariff, Second Revised Volume 4, to be effective 1/6/09.

*Filed Date:* 02/09/2009.

*Accession Number:* 20090210–0167.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER00–3251–019; ER01–1919–011; ER01–1147–006; ER01–513–021; ER98–1734–014; ER99–2404–013; ER99–754–016.

*Applicants:* Exelon Generating Company, LLC, AmerGen Energy Company, LLC, Commonwealth Edison Company, PECO Energy Company, Exelon West Medway, LLC, Exelon New England Power Marketing, L.P.

*Description:* Exelon Generation Company, LLC *et al.* submits Market-Based Rate Authority and Generation Assets in compliance with the Commission's 1/15/09 Order, and Order 697 and 697A.

*Filed Date:* 02/13/2009.

*Accession Number:* 20090217–0162.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 6, 2009.

*Docket Numbers:* ER05–1218–003; ER00–2887–006; ER05–1219–003; ER06–703–002; ER07–1341–003; ER96–149–013; ER97–2414–012;

*Applicants:* Bayonne Plant Holding, L.L.C.; Newark Bay Cogeneration Partnership, L.P.; Camden Plant Holding, L.L.C.; Pedricktown Cogeneration Company, LP; York Generation Company LLC; Dartmouth Power Associates Limited Partnership; Lowell Cogeneration Company Limited Partnership

*Description:* Supplement to Updated Market Power Analysis of Bayonne Plant Holding, L.L.C., *et al.*

*Filed Date:* 02/17/2009.

*Accession Number:* 20090217–5063.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 10, 2009.

*Docket Numbers:* ER07–22–001.

*Applicants:* Jump Power, LLC.

*Description:* Jump Power, LLC submits its Order No. 697 Compliance Filing and Application for Category 1 Status.

*Filed Date:* 02/06/2009

*Accession Number:* 20090211–0032.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 27, 2009

*Docket Numbers:* ER07–1137–002.

*Applicants:* Lockhart Power Company.

*Description:* Lockhart Power Company submits Second Revised Sheet 2 to FERC Electric Tariff, First Revised Volume 3 pursuant to Order 614.

*Filed Date:* 02/13/2009.

*Accession Number:* 20090213–0181.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 6, 2009.

*Docket Numbers:* ER07–1249–005.

*Applicants:* Lockport Energy Associates, L.P.

*Description:* Amendment to Triennial Market Power Analysis of Lockport Energy Associates, L.P.

*Filed Date:* 02/12/2009.

*Accession Number:* 20090212–5133.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 5, 2009.

*Docket Numbers:* ER08–54–010.

*Applicants:* ISO New England Inc.

*Description:* PTO Administrative Committee and the New England Power Pool requests that Substitute First Sheet 1426A be withdrawn from the Compliance Filing in its entirety.

*Filed Date:* 02/12/2009.

*Accession Number:* 20090213–0177.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 5, 2009.

*Docket Numbers:* ER08–777–003;

ER08–396–004; EL08–31–002.

*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy, Inc. *et al.* submits Third Substitute 2nd Revised Sheet 175 to FERC Electric Tariff, Second Revised Volume 5 to Westar's Open Access Transmission Tariff.

*Filed Date:* 02/13/2009.

*Accession Number:* 20090218–0021.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 6, 2009.

*Docket Numbers:* ER08–1328–001.

*Applicants:* New England Participating Transmission Owners.

*Description:* Second Supplement to July 31, 2008 Annual Informational Filing Regarding ISO Tariff Changes in Effect as of December 1, 2008 of Maine Electric Power Company.

*Filed Date:* 02/17/2009.

*Accession Number:* 20090217–5215.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 10, 2009.

*Docket Numbers:* ER09–172–003; ER09–173–003.

*Applicants:* Canandaigua Power Partners, LLC, Canandaigua Power Partners II, LLC.

*Description:* Canandaigua Power Partners, LLC *et al.* submits revised tariff pages for their market-based rate wholesale power tariff identifying the tariffs', effective 1/30/09.

*Filed Date:* 02/12/2009.

*Accession Number:* 20090213–0174.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 5, 2009.

*Docket Numbers:* ER09–337–000; ER09–398–000.

*Applicants:* Ameren Energy Generating Company; Ameren Energy Marketing Company.

*Description:* Joint Response to Deficiency Letter of Ameren Energy Generating Company and Ameren Energy Marketing Company.

*Filed Date:* 02/02/2009.

*Accession Number:* 20090202–5190.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 23, 2009.

*Docket Numbers:* ER09–458–001.

*Applicants:* Calpine Energy Services, L.P.

*Description:* Calpine Energy Services, LP amends its 12/17/08 filing of proposed revisions to its market-based rate tariff to permit the sale, assignment, or transfer of transmission rights.

*Filed Date:* 02/12/2009.

*Accession Number:* 20090213–0173.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 5, 2009.

*Docket Numbers:* ER09–482–000.

*Applicants:* Golden Spread Electric Cooperative, Inc.

*Description:* Golden Spread Electric Cooperative, Inc. requests that FERC defer taking action.

*Filed Date:* 02/12/2009.

*Accession Number:* 20090217–0122.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 5, 2009.

*Docket Numbers:* ER09–512–001.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc. submits amendment to the executed Amended and Restated. Interconnection and Operating Agreement among the Midwest ISO, *et al.*

*Filed Date:* 02/09/2009.

*Accession Number:* 20090211–0011.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER09–522–001.

*Applicants:* Alliant Energy Corporate Services, Inc.

*Description:* Alliant Energy Corporate Services, Inc. submits its 12/22/08 filing to reflect a tariff cancellation date of 1/6/09 rather than 1/1/09.

*Filed Date:* 02/06/2009.

*Accession Number:* 20090209–0130.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 27, 2009.

*Docket Numbers:* ER09-541-001.  
*Applicants:* PJM Interconnection L.L.C.

*Description:* PJM Interconnection, LLC submits Amendment to its filing of the Notice of Cancellation of Service Agreement 733.

*Filed Date:* 02/13/2009.

*Accession Number:* 20090218-0022.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 6, 2009.

*Docket Numbers:* ER09-561-000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc. submits an amendment to the request to terminate the market participant agreement with Olde Towne Energy Associates, LLC etc.

*Filed Date:* 02/12/2009.

*Accession Number:* 20090217-0121.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 5, 2009.

*Docket Numbers:* ER09-655-000.

*Applicants:* Duke Energy Retail Sales, LLC.

*Description:* Duke Energy Retail Sales, LLC submits requests that the Commission grant authorization for wholesale sales of electric capacity, energy, ancillary services at market based rates for all markets outside of Duke Energy Carolinas, Inc. *et al.*

*Filed Date:* 02/06/2009.

*Accession Number:* 20090211-0009.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 27, 2009.

*Docket Numbers:* ER09-659-001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits Original Rate Schedule FERC No. 11 *et al.*

*Filed Date:* 02/09/2009.

*Accession Number:* 20090211-0010.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER09-660-000; ER09-660-001.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc. submits Open Access Transmission, Energy and Operating Reserve Markets Tariff etc. and on 6/12/09 Midwest submit an amendment to this filing.

*Filed Date:* 02/06/2009; 02/12/2009.

*Accession Number:* 20090209-0120; 20090212-0265.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 5, 2009.

*Docket Numbers:* ER09-661-000.

*Applicants:* State Line Energy, L.L.C.

*Description:* State Line Energy, LLC submits its Rate Schedule FERC 2, its revenue requirement for Reactive

Supply and Voltage Control from Generation Sources Service supplied by the Company's generation facilities etc.

*Filed Date:* 02/06/2009.

*Accession Number:* 20090209-0119.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 27, 2009.

*Docket Numbers:* ER09-662-000.

*Applicants:* PJM Interconnection L.L.C.

*Description:* PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement with Frederick County Department of Public Works and Potomac Edison Company etc.

*Filed Date:* 02/06/2009.

*Accession Number:* 20090209-0118.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 27, 2009.

*Docket Numbers:* ER09-672-000.

*Applicants:* Carolina Power & Light Company.

*Description:* Carolina Power & Light Co. submits a revised Power Supply Agreement with North Carolina Electric Membership Corp.

*Filed Date:* 02/09/2009.

*Accession Number:* 20090210-0277.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER09-683-000.

*Applicants:* Alex Energy, LLC.

*Description:* Alex Energy LLC submits the Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority, FERC Electric Tariff, Original Volume 1.

*Filed Date:* 02/12/2009.

*Accession Number:* 20090213-0172.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 5, 2009.

*Docket Numbers:* ER09-702-000.

*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy, Inc. submits Second Revised Sheet 9 of a Control Area Services Agreement, between Westar and the Missouri Joint Municipal Electric Utility Commission etc.

*Filed Date:* 02/11/2009.

*Accession Number:* 20090212-0264.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 4, 2009.

*Docket Numbers:* ER09-703-000.

*Applicants:* Tampa Electric Company.

*Description:* Tampa Electric Company submits First Revised Sheet 145 *et al.* in its open access transmission tariff.

*Filed Date:* 02/11/2009.

*Accession Number:* 20090212-0263.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 4, 2009.

*Docket Numbers:* ER09-704-000.

*Applicants:* Carolina Power & Light Company.

*Description:* Progress Energy Carolinas, Inc. *et al.* submits Standard

Large Generator Interconnection Agreement between CP&L and North Carolina Electric Membership Corporation.

*Filed Date:* 02/12/2009.

*Accession Number:* 20090212-0262.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 5, 2009.

*Docket Numbers:* ER09-705-000.

*Applicants:* Saracen Power LLC.

*Description:* Saracen Power LLC submits petition for acceptance of initial rate schedule, waivers and blanket authorization.

*Filed Date:* 02/13/2009.

*Accession Number:* 20090217-0161.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 6, 2009.

*Docket Numbers:* ER09-706-000.

*Applicants:* Pacific Gas and Electric Company, Los Alamos Energy, LLC.

*Description:* Pacific Gas and Electric Company submits Notice of Termination of the Wholesale Distribution Tariff Service Agreement and an Agreement for Parallel Operation-Nonutility Owned Generation etc.

*Filed Date:* 02/12/2009.

*Accession Number:* 20090213-0175.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 5, 2009.

*Docket Numbers:* ER09-707-000.

*Applicants:* Southern California Edison Company.

*Description:* Southern California Edison Company submits revised rate for the Interconnection Facilities Agreement between SCE and Sierra Power Corporation, Service Agreement 68 under SCE's Wholesale Distribution Access Tariff etc.

*Filed Date:* 02/12/2009.

*Accession Number:* 20090213-0176.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 5, 2009.

*Docket Numbers:* ER09-708-000.

*Applicants:* Southern California Edison Company.

*Description:* Southern California Edison Company submits revised rate sheets for the amended Service Agreement for Wholesale Distribution Service dated 11/26/97 and the Service Agreement for Wholesale Distribution Service dated 7/1/08 etc.

*Filed Date:* 02/12/2009.

*Accession Number:* 20090213-0178.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 5, 2009.

*Docket Numbers:* ER09-710-000.

*Applicants:* California Independent System Operator Corporation.

*Description:* California Independent System Operator Corporation submits amendment to the Market Redesign and Technology Upgrade tariff.

*Filed Date:* 02/13/2009.

*Accession Number:* 20090217–0165.  
*Comment Date:* 5 p.m. Eastern Time on Friday, March 6, 2009.

*Docket Numbers:* ER09–711–000.  
*Applicants:* Phelps Dodge Energy Services, LLC.

*Description:* Phelps Dodge Energy Services, LLC submits Notice of Succession to notify the Commission of a corporate name change resulting from a change in upstream ownership of PDES.

*Filed Date:* 02/13/2009.

*Accession Number:* 20090217–0166.  
*Comment Date:* 5 p.m. Eastern Time on Friday, March 6, 2009.

*Docket Numbers:* ER09–713–000.  
*Applicants:* PJM Interconnection L.L.C.

*Description:* PJM Interconnection, LLC submits Network Integration Transmission Service Agreement between PJM and the Northern Virginia Electric Cooperative, etc.

*Filed Date:* 02/13/2009.

*Accession Number:* 20090217–0167.  
*Comment Date:* 5 p.m. Eastern Time on Friday, March 6, 2009.

*Docket Numbers:* ER09–714–000.  
*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits revisions to its Open Access Transmission Tariff.

*Filed Date:* 02/13/2009.

*Accession Number:* 20090217–0169.  
*Comment Date:* 5 p.m. Eastern Time on Friday, March 6, 2009.

*Docket Numbers:* ER09–715–000.  
*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits Service Agreement for Network Integration Transmission Service between SPP as Transmission Provider and Southwestern Public Service Company as Network Customer, *et al.*

*Filed Date:* 02/13/2009.

*Accession Number:* 20090217–0168.  
*Comment Date:* 5 p.m. Eastern Time on Friday, March 6, 2009.

*Docket Numbers:* ER09–716–000.  
*Applicants:* ISO New England Inc.

*Description:* ISO New England Inc. submits Capital Projects Report and schedule of the unamortized costs of the ISO's funded capital expenditures for the quarter ending 12/31/08.

*Filed Date:* 02/13/2009.

*Accession Number:* 20090217–0163.  
*Comment Date:* 5 p.m. Eastern Time on Friday, March 6, 2009.

*Docket Numbers:* ER09–717–000.  
*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc.

submits revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff.

*Filed Date:* 02/13/2009.

*Accession Number:* 20090217–0164.  
*Comment Date:* 5 p.m. Eastern Time on Friday, March 6, 2009.

*Docket Numbers:* ER09–718–000.  
*Applicants:* Southern California Edison Company.

*Description:* Southern California Edison Company submits letter agreement between SCE and Brea Power II, LLC.

*Filed Date:* 02/13/2009.

*Accession Number:* 20090217–0174.  
*Comment Date:* 5 p.m. Eastern Time on Friday, March 6, 2009.

*Docket Numbers:* ER09–719–000.  
*Applicants:* Public Service Company of New Hampshire.

*Description:* Public Service Company of New Hampshire submits revised Interconnection and Operations Agreement by and between PSNH and NAEA Newington Energy, LLC, etc.

*Filed Date:* 02/13/2009.

*Accession Number:* 20090217–0177.  
*Comment Date:* 5 p.m. Eastern Time on Friday, March 6, 2009.

*Docket Numbers:* ER09–720–000.  
*Applicants:* Southern California Edison Company.

*Description:* Southern California Edison Company submits revised rate sheets for the Small Generator Interconnection Agreement *et al.*

*Filed Date:* 02/13/2009.

*Accession Number:* 20090217–0176.  
*Comment Date:* 5 p.m. Eastern Time on Friday, March 6, 2009.

*Docket Numbers:* ER09–721–000.  
*Applicants:* Southern California Edison Company.

*Description:* Southern California Edison Company submits revised rate sheets to the Anaheim Puente Development Wholesale Distribution Load Interconnection Facilities Agreement, *et al.*

*Filed Date:* 02/13/2009.

*Accession Number:* 20090217–0175.  
*Comment Date:* 5 p.m. Eastern Time on Friday, March 6, 2009.

*Docket Numbers:* ER09–722–000.  
*Applicants:* Puget Sound Energy, Inc.

*Description:* Puget Sound Energy, Inc. submits for filing an Amendment 4 to Rate Schedule FERC 143 Colstrip Project Transmission Agreement *et al.*

*Filed Date:* 02/13/2009.

*Accession Number:* 20090218–0025.  
*Comment Date:* 5 p.m. Eastern Time on Friday, March 6, 2009.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES09–19–000.

*Applicants:* Sky River Partnership, Victory Garden Phase IV Partnership, FPL Energy Cabazon Wind, LLC.

*Description:* Application of FPL Energy Cabazon Wind, LLC.

*Filed Date:* 02/13/2009.

*Accession Number:* 20090213–5160.  
*Comment Date:* 5 p.m. Eastern Time on Friday, March 6, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA08–61–001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits revisions to Attachment O of its Open Access Transmission Tariff pursuant to Order 890 and 890–A.

*Filed Date:* 02/06/2009.

*Accession Number:* 20090210–0268.  
*Comment Date:* 5 p.m. Eastern Time on Friday, February 27, 2009.

*Docket Numbers:* OA08–76–001.

*Applicants:* E.ON U.S. LLC.

*Description:* Louisville Gas and Electric Company *et al.* submits revised Attachment C to the LG&E/KU joint Open Access Transmission Tariff.

*Filed Date:* 02/09/2009.

*Accession Number:* 20090211–0014.  
*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

Take notice that the Commission received the following electric reliability filings:

*Docket Numbers:* RR06–1–021; RR07–1–005; RR07–2–005; RR07–3–006; RR07–4–005; RR07–5–006; RR07–6–007; RR07–7–007; RR07–8–006.

*Applicants:* North American Electric Reliability Corp.

*Description:* Compliance Filing of the North American Electric Reliability Corporation in Response to December 19, 2008, Order.

*Filed Date:* 02/17/2009.

*Accession Number:* 20090217–5165.  
*Comment Date:* 5 p.m. Eastern Time on Monday, March 9, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that

document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. E9-3985 Filed 2-24-09; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER09-686-001]

#### New York Independent System Operator, Inc.; Notice of Filing

February 18, 2009.

Take notice that on February 12, 2009, the New York Independent System Operator, Inc. filed an erratum to its February 10, 2009 filing, revising two of its Tariffs, Market Administration and Controls Area Services Tariff and its Open Access Transmission Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on February 24, 2009.

**Kimberly D. Bose,**

Secretary.

[FR Doc. E9-3970 Filed 2-24-09; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER05-1410-012; EL05-148-012; Docket No. ER09-412-001]

#### PJM Interconnection, L.L.C.; PJM Interconnection, L.L.C.; Notice Deferring Technical Conference

February 18, 2009.

In *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,272, at P 53 (2008), the Commission indicated that it expected to hold a technical conference in this proceeding in February 2009. The date of that conference is hereby deferred pending further notice.

**Kimberly D. Bose,**

Secretary.

[FR Doc. E9-3969 Filed 2-24-09; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2008-0719, FRL-8776-8]

### Agency Information Collection Activities; Proposed Collection; Comment Request; Information Collection Request for Cooling Water Intake Structures at Phase III Facilities (Renewal), EPA ICR No. 2169.02, OMB Control No. 2040-0268

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on May 31, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before April 27, 2009.

**ADDRESSES:** Submit your comments, referencing docket ID No. EPA-HQ-OW-2008-0719, by one of the following methods:

- <http://www.regulations.gov>: Follow the online instructions for submitting comments.

- E-mail: [ow-docket@epa.gov](mailto:ow-docket@epa.gov) (Identify Docket ID No. EPA-HQ-OW-2008-0719, in the subject line).

- Mail: Water Docket, Environmental Protection Agency, Mailcode: 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of three copies.

- Hand Delivery: EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments identified by the Docket ID No. EPA-HQ-OW-2008-0719. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit

information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

#### FOR FURTHER INFORMATION CONTACT:

Amelia Letnes, State and Regional Branch, Water Permits Division, OWM Mail Code: 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-5627; e-mail address: [letnes.amelia@epa.gov](mailto:letnes.amelia@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for the ICR identified in this document (ID No. EPA-HQ-OW-2008-0719), which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the Water Docket is 202-566-2426.

Use <http://www.regulations.gov> to obtain a copy of the existing collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in

the docket ID number identified in this document.

#### What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

- (i) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (ii) Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (iii) Enhance the quality, utility, and clarity of the information to be collected; and
- (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

#### What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of technical information/data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

#### What Information Collection Activity or ICR Does This Apply to?

*Affected entities:* Entities potentially affected by this action include new

offshore oil and gas extraction facilities meeting the applicability criteria of the 316(b) Phase III Facilities at 40 CFR 125.131.

*Title:* Cooling Water Intake Structures at Phase III Facilities (Renewal)

*ICR Numbers:* EPA ICR No. 2169.02, OMB Control No. 2040-0268

*ICR Status:* This ICR is currently scheduled to expire on May 31, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

*Abstract:* The section 316(b) regulation for Phase III facilities requires the collection of information from new offshore oil and gas extraction facilities which use a cooling water intake structure(s) that uses at least 25 percent of the water it withdraws for cooling purposes, and have design intake flows greater than 2 MGD. Section 316(b) of the Clean Water Act (CWA) requires that any standard established under section 301 or 306 of the CWA and applicable to a point source must require that the location, design, construction and capacity of cooling water intake structure(s) at that facility reflect the best technology available for minimizing adverse environmental impact. Such impact occurs as a result of impingement (where fish and other aquatic life are trapped on technologies at the entrance to cooling water intake structures) and entrainment (where aquatic organisms, eggs, and larvae are taken into the cooling system, passed through the heat exchanger, and then pumped back out with the discharge from the facility). The rule contains requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new offshore oil and gas extraction facilities. These requirements seek to establish the best technology available for minimizing adverse environmental impact associated with the use of cooling water intake structure(s).

*Burden Statement:* The annual average reporting and record keeping burden for the existing collection of information by facilities responding to the section 316(b) Phase III Facilities is estimated to be 511 hours per facility

respondent (i.e., an annual average of 11,238 hours of burden divided among an annual average of 22 facilities). For new offshore oil and gas extraction facilities, the permitting process is handled directly by EPA Regions 4, 6, and 10. Since this burden is incurred by the Federal Government rather than the States, it is not included as part of the burden statement for State Directors.

The ICR provides a detailed explanation of the Agency's estimate for the existing ICR, which is only briefly summarized here:

*Estimated Total Number of Potential Respondents:* 22 facilities.

*Frequency of Response:* Every five years.

*Estimated Total Average Number of Responses for Each Respondent:* 22.

*Estimated Total Annual Burden Hours:* 11,238 hours.

*Estimated Total Annual Costs:* \$1,157,139. This includes an estimated labor burden cost of \$581,714 and an estimated cost of \$575,425 for capital investment or maintenance and operational costs.

The revised ICR is expected to have burden change related to universe fluctuations and increased labor rates.

#### What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 6, 2009.

**James A. Hanlon,**

*Director, Office of Wastewater Management.*  
[FR Doc. E9-4006 Filed 2-24-09; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2002-0011; FRL-8776-6]

### Agency Information Collection Activities; Proposed Collection; Comment Request; Laboratory Quality Assurance Evaluation Program for Analysis of Cryptosporidium Under the Safe Drinking Water Act (Renewal); EPA ICR No. 2067.04, OMB Control No. 2040-0246

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on May 31, 2009. This notice describes the current "Laboratory Quality Assurance Evaluation Program for Analysis of *Cryptosporidium* under the Safe Drinking Water Act," hereafter referred to as the "Lab QA Program," and requests comment on both the program and the renewed paperwork requirements.

**DATES:** Comments must be submitted on or before April 27, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OW-2002-0011, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OW-2002-0011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected using <http://www.regulations.gov> or e-mail. Please contact EPA prior to submitting CBI. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

#### FOR FURTHER INFORMATION CONTACT:

Carrie Miller, EPA, Office of Ground Water and Drinking Water, Technical Support Center, 26 West Martin Luther King Drive (MS-140), Cincinnati, Ohio 45268; e-mail address: [miller.carrie@epa.gov](mailto:miller.carrie@epa.gov).

#### SUPPLEMENTARY INFORMATION:

#### How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OW-2002-0011, which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the Water Docket is 202-566-2426.

Use <http://www.regulations.gov> to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket

that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

#### What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (iii) Enhance the quality, utility, and clarity of the information to be collected; and
- (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

EPA is also interested in any other comments regarding the improvements to the Lab QA Program described in this notice.

#### What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response.

You may also provide the name, date, and **Federal Register** citation.

#### What Information Collection Activity or ICR Does This Apply to?

**Affected entities:** Entities potentially affected by this action are public and private water testing laboratories. EPA estimates that a total of 65 laboratories will seek to attain or maintain EPA recognition under the Lab QA Program. This estimate includes 63 laboratories seeking continued recognition under the Lab QA Program and 2 laboratories seeking initial recognition.

**Title:** Laboratory Quality Assurance Evaluation Program for Analysis of *Cryptosporidium* under the Safe Drinking Water Act (Renewal).

**ICR numbers:** EPA ICR No. 2067.04, OMB Control No. 2040-0246.

**ICR status:** This ICR is currently scheduled to expire on May 31, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. Approved OMB control numbers for EPA's regulations in title 40 of the CFR are listed in 40 CFR part 9 of the **Federal Register** and displayed either by publication of the **Federal Register** or by other appropriate means, such as on the applicable collection instrument or form.

**Abstract:** In September 2000, the Stage 2 Microbial and Disinfection Byproducts Federal Advisory Committee (Committee) signed an Agreement in Principle (Agreement) (65 FR 83015, December 29, 2000) (EPA, 2000) with consensus recommendations for two future drinking water regulations: the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) and the Stage 2 Disinfectants and Disinfection Byproducts Rule. The LT2ESWTR was to address risk from microbial pathogens, specifically *Cryptosporidium*. The Committee recommended that the LT2ESWTR require public water systems (PWSs) to monitor their source water for *Cryptosporidium* using EPA Method 1622 or EPA Method 1623. Additional *Cryptosporidium* treatment requirements for PWSs would be based on the source water *Cryptosporidium* levels. EPA took into account the Committee's advice and recommendations as it developed the LT2ESWTR, which was published on January 5, 2006.

Under the LT2ESWTR, EPA requires public water systems to use approved laboratories when conducting *Cryptosporidium* monitoring. In the preamble to the LT2ESWTR as well as

several other notices, EPA has described the criteria for approval of laboratories to analyze *Cryptosporidium* samples under the LT2ESWTR. See 71 FR 727 (January 5, 2006) and 67 FR 9731 (March 4, 2002). The Lab QA Program, as revised, is described in this notice. The purpose of the Lab QA Program is to identify laboratories that can reliably measure for the occurrence of *Cryptosporidium* in surface water and to ensure that approved laboratories maintain that capability. Other, State-based laboratory oversight programs do not currently address approval of laboratories for the *Cryptosporidium* analysis required by the LT2ESWTR.

Through today's notice, EPA is inviting comment on refinements to the information collected to support EPA's Lab QA Program. As of May 2007, EPA concluded that sufficient laboratory capacity exists for the LT2ESWTR. As a result, EPA has generally postponed evaluation of additional laboratories, including commercial, county, municipal and utility laboratories, until further notice. Subject to the availability of resources, EPA will consider evaluation of State and EPA Regional laboratories on a case-by-case basis, based on the role that States and EPA Regions play in the certification and approval programs for laboratories. The Lab QA Program is continuously being refined and updated as new information and technologies become available. The program will continue to evolve and EPA will continue to revise and update burden estimates, as needed, with any subsequent ICR.

Approved laboratories will have demonstrated, and are to continue to demonstrate, proficient and reliable detection and enumeration of *Cryptosporidium* in surface water sources for public water systems. They will have passed all elements in the Lab QA Program and continue to successfully participate in all program activities. Approved laboratories are responsible for notifying EPA of losses of key personnel or essential equipment and changes in policies or procedures that directly affect the validity of data or any other change affecting the capability of the laboratory including change in location. Participating laboratories are to also demonstrate ongoing capability and method performance by following all applicable method quality control (QC) procedures, analyzing ongoing proficiency testing (PT) samples (generally three times per year), submitting requested data to EPA, and participating in periodic re-evaluations.

The Lab QA Program procedures have been updated to reflect that the minimum recovery for *Cryptosporidium*

in ongoing precision and recovery (OPR) samples is now 22 percent, updated from the original 11 percent. This updated minimum recovery is based on an updated data set and should provide a better assessment of laboratory performance than the original value for the following reasons: (1) The data set is more current and is based on more samples (a total of 333); (2) 52 more laboratories are included in the data set; (3) data were generated using the 2005 version of Method 1623, which is the required version for LT2ESWTR analyses; (4) data were generated using filters currently used to analyze LT2ESWTR samples rather than those filters used originally; and (5) the number of oocysts spiked into the samples was unknown to the laboratories. Calculations for the updated criteria are available in Docket ID No. EPA-HQ-OW-2002-0011. Laboratories are to now document a minimum of 22 percent recovery for OPR samples in an updated QC chart prior to analysis of LT2ESWTR samples at the frequency required in section 9.7 of the method.

The ongoing PT sample packets generally consist of three spiked samples shipped to the laboratory within a standard matrix. If a laboratory submits poor PT results, EPA may recommend additional follow-up action to demonstrate that the laboratory's performance remains acceptable. Additional actions may include submission of PT slides to EPA, repeat analyses, providing additional QC data, and investigation of problems with reagents and equipment. Repeated failure to demonstrate laboratory capability and acceptable method performance may result in suspension or downgrading of approval status as outlined later in this section.

EPA may re-evaluate laboratories participating in the program to verify *Cryptosporidium* laboratory quality assurance (QA) on both an "as-needed" and periodic basis (generally not exceeding once every three years). In the case of a periodic assessment, EPA will generally notify the laboratory that they are due for re-evaluation and request a package with documentation of personnel status, equipment maintenance, standard operating procedures, training records, and QC charts. After the package has been received, it will be evaluated for completeness. EPA generally contacts the laboratory within 15 days of package submission if information is missing. When a complete package has been received, the following steps will complete the process:

1. The laboratory will send positive staining control and OPR slides for evaluation by EPA.

2. The laboratory will order blind slides spiked with *Cryptosporidium* from a qualified vendor for each analyst. Each analyst will perform an independent count of one slide. The results and slides will be submitted to a technical auditor.

3. EPA will schedule an on-line Internet analyst verification of performance for microscopists to demonstrate their ability to identify *Cryptosporidium* oocysts.

4. EPA conducts a one-day on-site evaluation that will primarily focus on method performance and data recording. Laboratory personnel will be asked to order blind oocyst suspensions for use in sample and IMS control spiking in the presence of an auditor, and then complete the analyses within applicable method holding times and send results to EPA.

5. EPA will send the laboratory a report detailing all findings, generally within 60 days after the evaluation is complete. The laboratory is then asked to provide written responses to any deficiencies identified in the report within 60 days. Provided all responses to the deficiencies cited in the report are acceptable, the Lab QA Program will then base its decision for continued laboratory approval on PT results, quality of the positive control and OPR slide, slide counts, Internet analyst verification, on-site evaluation and recovery values for blind analyses initiated during the on-site evaluation.

State and EPA Regional Laboratories may contact the laboratory approval manager regarding new application submissions. Subject to available resources, EPA estimates that up to two State or EPA Regional Laboratories will seek first-time approval each year. Laboratories seeking approval under the program must submit an application package and provide: a demonstration of availability of qualified personnel and appropriate instrumentation, equipment and supplies; detailed laboratory standard operating procedures; a current copy of the table of contents of their laboratory's QA plan for protozoa analyses; and an initial demonstration of capability data for EPA Method 1623, which includes initial precision and recovery IPR test results and matrix spike/matrix spike duplicate (MS/MSD) test results for *Cryptosporidium*. After EPA completes its review of the application, the Agency will contact the laboratory for follow-up information and to schedule shipment of initial PT samples consisting of eight spiked samples within a standard matrix. EPA

then generally conducts an on-site evaluation and data audit. Further information is provided at [http://www.epa.gov/safewater/disinfection/lt2/lab\\_home.html](http://www.epa.gov/safewater/disinfection/lt2/lab_home.html). The Agency notes that completion of an application by a laboratory does not ensure that the Agency will act on the laboratory's request; interested laboratories are encouraged to contact the laboratory approval manager prior to investing substantial effort towards their application. Further, a decision by the Agency to review an application, to send initial PT samples, and/or to schedule or conduct an on-site evaluation and data evaluation, does not ensure that the review process will be completed or that the laboratory will ultimately be approved. Decisions will be made based on the facts associated with a particular application and actions will be taken as Agency resources permit.

Approved laboratories that do not continue to meet the criteria for the Lab QA Program may have their status downgraded to provisional or have their approval suspended. Details of the basis for downgrading or suspending a laboratory's approval are provided in the section entitled "Clarification of Basis and Procedures for Downgrading/Suspending Approval for Laboratories for the Analysis of *Cryptosporidium* in Water Under the Long Term 2 Enhanced Surface Water Treatment Rule" (see the following section). Provided EPA has sufficient resources to review requests for upgrade or reinstatement, laboratories may have to undertake additional activities such as analyzing additional PT samples, undergoing an on-site evaluation, and/or counting blind spiked slides in order to have their status upgraded or their approval reinstated. Details regarding additional activities that may be required are provided in the next section.

#### **Clarification of Basis and Procedures for Downgrading/Suspending Approval of Laboratories for the Analysis of *Cryptosporidium* in Water Under the Long Term 2 Enhanced Surface Water Treatment Rule**

EPA's Office of Ground Water and Drinking Water, in the Office of Water, has developed a detailed description of the procedures and criteria used in actions concerning approving, downgrading and suspending laboratories for analysis of drinking water contaminants.

In order to assume primary enforcement responsibility for the drinking water regulations, a State must either have available laboratory facilities, approved by the

Administrator, capable of conducting analytical measurements of drinking water contaminants, or establish and maintain its own program for approval of laboratories. States wishing to adapt these procedures and criteria for their own approval program should revise it to accurately reflect their State approval program.

This section is intended to clarify EPA's intended practices and procedures for laboratory approval, downgrading or suspension for analysis of *Cryptosporidium* under the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) and to reflect good laboratory practice and standard proficiency evaluation in the industry; it is not a regulation. While EPA intends to generally follow the procedures laid out in this section, not every situation is reflected in these procedures and EPA may need to address case-specific situations in ways that differ from the procedures spelled out here. EPA welcomes comment on these procedures and may decide to revise them at any time in the future to reflect changes to its approach or to clarify and update the text.

- "Approved Laboratories" have demonstrated, and continue to demonstrate, proficient and reliable detection and enumeration of *Cryptosporidium* in surface water sources for public water systems. They have passed all elements in the Lab QA Program and continue to successfully participate in all program activities. Approved Laboratories notify the Approval Authority (EPA individual(s) administering the program or State individual(s) administering an equivalent laboratory certification program) of loss of key personnel or essential equipment, change in policies or procedures that directly affect the validity of data, and any other change affecting the capability of the laboratory including change in location.

- "Provisionally Approved Laboratories" have deficiencies but demonstrate their ability to consistently produce data of known quality. They continue to successfully participate in all Lab QA Program activities. A Provisionally Approved Laboratory may analyze drinking water samples for LT2ESWTR compliance purposes if the laboratory has identified themselves as provisionally approved to their clients and any reports clearly state that the laboratory's status is "provisionally approved."

- "Not Approved" designates a laboratory that has either not participated in the Lab QA Program, or has applied to the program but possesses deficiencies and, in the

opinion of the Approval Authority, does not consistently produce data that has met all applicable method QC requirements or has falsified data.

#### **Basis for Downgrading to "Provisionally Approved" Status**

An Approved Laboratory (referred to as "laboratory") may be downgraded to "Provisionally Approved" status for *Cryptosporidium* for any of the following reasons:

- Failure to analyze samples for the LT2ESWTR according to the December 2005 version of EPA Method 1623 or EPA Method 1622, including all QA/QC criteria;
- Failure to document a minimum of 22 percent for on-going precision and recovery values in an updated QC chart prior to analysis of LT2ESWTR samples at the frequency required in section 9.7 of the method;
- Failure to demonstrate proficiency based upon acceptable matrix spike recoveries for all modifications of the method procedures per Section 9.1.2 of the method;
- Failure to submit valid Proficiency Test (PT) results or meet PT acceptance limits described by the Approval Authority for the first two initial testing events or two out of three regular testing events administered by a vendor authorized by the Approval Authority. The acceptance limits are laboratory mean recovery between  $\pm 2$  standard deviations (SD) of the mean recovery for all approved laboratories in a given test event. Recoveries below the mean recovery minus 2 SD will fail the PT test event. Recoveries higher than the mean recovery plus 2 SD trigger additional evaluation, which may include one or more of the following: (1) On-site evaluation; (2) presence of a proctor when processing PT samples during the next test event; and/or (3) submission of PT microscope slides to the Approval Authority before the expiration of holding time during the next test event;
- Failure to submit PT slides within three weeks of PT test event when requested by the Approval Authority;
- Failure to maintain records of method modifications per section 9.1.2.2 of the method;
- Failure to notify the Approval Authority of loss of key personnel or essential equipment, change in policies or procedures that directly affect the validity of data, or other changes affecting the capability of the laboratory including change in location. Laboratory Approval does not automatically survive such changes; the Approval Authority may request an on-site or off-site evaluation and/or further proof of

compliance with all applicable method requirements;

- Failure to submit on-site evaluation materials and any other requested information within the time period requested by the Approval Authority; or
- Failure to participate satisfactorily in the Approval Authority Lab QA Program and demonstrate proficiency based upon: Sample and method holding time records; analyst verification skills; relative quality of positive staining control and on-going precision recovery (OPR) slides; acceptable performance of QC checks, including but not limited to blind slide counts; and acceptable precision and recovery values for all method variations.

#### **Procedures for Downgrading to "Provisionally Approved" Status**

- The Approval Authority will notify the laboratory director or owner of its intent to downgrade after becoming aware of the situation warranting downgrading;
- The laboratory director should review the problems cited, and within 30 days of receipt of the letter, send a letter to the Approval Authority specifying immediate corrective actions that are being taken;
- The Approval Authority will consider the adequacy of the response and notify the laboratory in writing of its approval status, generally within 14 days of receipt of the laboratory's response;
- After the Approval Authority notifies a laboratory, the Approval Authority will post status on the Web site list of laboratories and may schedule an on-site evaluation of the laboratory;
- The laboratory should identify and correct its problem(s) to the Approval Authority's satisfaction within 30 days of being notified of the downgrade or have approval status suspended;
- A Provisionally Approved laboratory may continue to analyze samples for compliance purposes, but must identify its status as Provisionally Approved on any report;
- A laboratory may request that the Approval Authority or State provide technical assistance to help identify and resolve any problem; however, adequate performance is the laboratory's responsibility and Approval Authority assistance should not delay the downgrading procedure.

#### **Basis for Suspending Approval Status**

A laboratory may be downgraded from Approved or Provisionally Approved status to "Not Approved" for any of the following reasons:

- Repeated verification that all applicable method QC requirements have been followed, when in fact they have not all been met;
- Repeated failure to document acceptable OPR values prior to analysis of LT2ESWTR samples;
- Reporting PT data from another laboratory as its own;
- Falsification of data or other deceptive practices including false verification that data submitted to the Data Collection and Tracking System (DCTS) was generated using approved methods and met all method QA/QC criteria;
- Refusal to participate in on-site or off-site evaluations conducted by the Approval Authority.

#### **Basis for Suspending Provisionally Approved Status**

- Failure to provide a letter to the Approval Authority within 30 days that adequately explains what immediate corrective actions were taken;
- Failure to identify and correct problems in response to downgrade within 30 days;
- Failure to provide accurate OPR control charts to the Approval Authority;
- Failure to submit valid PT results for the next two consecutive authorized PT test events within the acceptance limits specified;
- Continued failure to use the analytical methodology specified in the regulations;
- Failure to correct deviations identified during an on-site evaluation within 30 days; or
- Failure to provide requested demonstration, materials and documentation within 30 days, including: acceptable matrix spike recoveries for all method variations per section 9.1.2 of the method; bench sheets, examination forms or OPR charts for any samples requested; remote analyst verification; recent positive staining control and OPR microscope slides, one of each; and blind slide counts for each analyst.

#### **Procedures for Suspension**

The Approval Authority will notify the laboratory, in writing, of its intent to suspend approval. If the laboratory wishes to request reconsideration of this decision, it should submit such a request in writing to the Approval Authority within 30 days of receipt of the notice of intent to suspend approval. The laboratory will generally be downgraded immediately to "provisional approval" in the interim while the suspension is being considered. If no request for

reconsideration is filed, approval will be suspended.

The request for reconsideration should be supported with an explanation of the reasons for the challenge and should be signed by a responsible official from the laboratory such as the president/owner for a commercial laboratory, the laboratory supervisor of a municipal laboratory, or the laboratory director for a State or Regional laboratory.

The Approval Authority will make a decision and notify the laboratory in writing, generally within 30 days of receipt of the request for reconsideration. If the request is determined to be valid, the Approval Authority will take appropriate measures to reevaluate the facility and notify the laboratory, in writing, of its decision, generally within 60 days of the reevaluation.

Denial of the request will generally result in suspension of the laboratory's approval. Once approval is suspended, a public water system may not use the laboratory to analyze source water samples for compliance with LT2ESWTR source water monitoring requirements. The laboratory should notify its clients that it is no longer approved and will not accept any more LT2ESWTR samples for analysis.

#### **Upgrading or Reinstatement of Approval**

Subject to the availability of resources, the Approval Authority will consider written requests from the laboratory to seek upgrading or reinstatement of approval. Requests should state the reasons why the laboratory should regain its approval status. The laboratory should demonstrate that all deficiencies have been corrected and successfully complete two consecutive authorized PT test events within acceptance limits for Provisionally Approved laboratories or three consecutive authorized PT test events within acceptance limits for suspended laboratories. The authorized PT test events being described here are those submitted to all laboratories in the Lab QA Program, not special issue blind samples purchased independently from the vendor. The laboratory should provide evidence why the reasons for downgrading or suspension are no longer applicable and explain its technical competence. Acceptable demonstration of technical competence may include an on-site evaluation and/or any other measure the Approval Authority deems appropriate. The Approval Authority will consider compliance history, corrective actions implemented by the laboratory,

effectiveness of corrective actions, and professional judgment of the Approval Authority.

#### **Grievances**

Laboratories with grievances during the authorized PT events or regarding participation in the Lab QA Program should immediately contact the Program Manager at the Approving Authority and try to remedy the problem. When the laboratory feels they have not gotten immediate or satisfactory results, they should contact the supervisor at the Approving Authority. The management at the Approving Authority will work with the Program Manager to quickly address grievances. A final decision for all grievances will be made generally within 30 days of contacting the Approving Authority.

#### **Request for Comment**

The EPA is soliciting comments on this notice to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and
5. Consider any necessary changes to the Lab QA Program. As an example, EPA is particularly interested in comments from States regarding the potential for their laboratory programs to assume any/all responsibility for the approval and oversight of LT2ESWTR laboratories, including comments on the appropriate timeframes for such. The Agency also welcomes comments regarding the appropriateness of turning to commercial PT providers as the source of PT samples for laboratories, in lieu of the PT program currently administered by the Agency.

*Burden Statement:* The burden estimate for the Lab QA Program information collection includes all the burden hours and costs required for gathering information, and developing and maintaining records associated with the Lab QA Program. An estimated 65

respondents will participate in an average of 4.4 responses per year to include: analysis and reporting of PT samples three times per year, application for initial or re-audit once every three years, off-site re-evaluation activities once every three years, and on-site evaluation once every three years. A small subset of laboratories will perform follow-up activities based on inadequate QA/QC, failed OPRs, incomplete records, delayed communication to EPA or poor PT results. A few laboratories perform more than one method version and will analyze an additional set of PT samples three times per year. The total annual public reporting and recordkeeping burden for this collection of information is estimated to be 4843 hours at a cost of \$269,800.40. The average hours and cost per response for the average of 4.4 responses per year are 16.9 hours and \$943.36, respectively. These estimates assume that laboratories participating in the Lab QA Program have the necessary equipment needed to conduct the analyses. Therefore, there are no start-up costs. The estimated total annual capital cost is \$0.00. The total estimated Operation and Maintenance (O&M) costs is \$141,929.00.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:  
*Estimated Total Number of Potential Respondents:* 65.

*Frequency of Response:* Annual.  
*Estimated Total Average Number of Responses for Each Respondent:* 4.4.  
*Estimated Total Annual Burden Hours:* 4843 hours.

*Estimated Total Annual Costs:* \$411,729.40. This includes an estimated burden cost of \$269,800.40 and an estimated cost of \$141,929.00 for capital investment or maintenance and operational costs.

#### Are There Changes in the Estimates From the Last Approval?

Changes in burden have occurred due to inflation, re-evaluation of hours for tasks, and improved demonstration of capability. Inflation has increased all operation and maintenance and labor costs accordingly. The increase in the respondent universe has increased the overall burden costs for the respondents. EPA's original estimates for hours to participate and maintain the Lab QA Program were made before the program began. Because the program has matured and several years of QC data have been collected, the burden has changed for performing improved and refined procedures. The burden for some tasks has been estimated and will be re-evaluated as the program

progresses. EPA has added the preceding section entitled "Clarification of Basis and Procedures for Downgrading/Suspending Approval for Laboratories for the Analysis of *Cryptosporidium* in Water Under the Long Term 2 Enhanced Surface Water Treatment Rule." Some approved laboratories may have to undertake additional activities to demonstrate continued acceptable performance to EPA, which may increase the burden of participation in the Lab QA Program for those laboratories. EPA estimates that nine laboratories per year may have to undertake additional activities to demonstrate acceptable performance to EPA. These estimates will be corrected as the program continues.

#### What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 19, 2009.

**Cynthia C. Dougherty,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. E9-4009 Filed 2-24-09; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2009-0124; FRL-8776-5]

#### Agency Information Collection Activities; Proposed Collection; Comment Request; Auto-Body Compliance Assessment Pilot Project; EPA ICR No. 2344.01, OMB Control No. 2009-NEW

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). If approved, the ICR would allow EPA to

pilot in EPA Region 1 (New England) an approach to assessing the effectiveness of compliance assistance in improving environmental performance. The ICR would authorize the administration of surveys, by telephone and on-site, to a random sample of auto-body shops subject to Subpart HHHHHH National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources (NESHAP Subpart HHHHHH). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before April 27, 2009.

**ADDRESSES:** Submit your comments identified by Docket ID No. EPA-HQ-OECA-2009-0124. While EPA encourages electronic submittals, you can submit comments by any one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [harmon.kenneth@epa.gov](mailto:harmon.kenneth@epa.gov).

- *Fax:* (202) 564-7083.

- *Mail:* Environmental Protection Agency, Mailcode: 2224A, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center, EPA West Room 3334, 1301 Constitution Ave., NW., 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OECA-2009-0124. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment

that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Harmon, Office of Compliance, (2224A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-7049; fax number: (202) 564-7083; e-mail address: [harmon.kenneth@epa.gov](mailto:harmon.kenneth@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OECA-2009-0124, which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the OECA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the OECA Docket is 202-566-1752.

Use <http://www.regulations.gov> to obtain a copy of the draft survey instruments, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

##### What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including

whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

##### What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

##### What Information Collection Activity or ICR Does This Apply to?

Docket ID No. EPA-HQ-OECA-2009-0124.

**Affected entities:** Entities potentially affected by this action are auto-body repair shops (NAICS code 81112) in EPA Region 1 (comprised of the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) and subject to NESHAP Subpart HHHHHH, 40 CFR Part 63 (under the authority of the Clean Air Act, 42 U.S.C. 7401, *et seq.*). Using geographic and demographic factors (and most likely focusing on low-

income areas) EPA will select a population or populations from one or more of these states from which to draw a sample of perhaps 1,400 shops to survey. EPA may also survey a control or comparison group of auto-body shops outside of Region 1, if it can identify population of shops with geographic and demographic factors similar to the Region 1 shops in a state where assistance like the assistance in Region 1 has not been offered.

##### Title: Auto-Body Compliance Assessment Pilot Project

**ICR numbers:** EPA ICR No. 2344.01, OMB Control No. 2009-NEW.

**ICR status:** This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

**Abstract:** The purpose of the ICR is to authorize the collection of information by the U.S. Environmental Protection Agency (EPA) to evaluate whether and how EPA's specific compliance assistance activities in Region 1 helped owners/operators of auto-body shops improve their operations. This ICR does not involve "fact-finding" for the purposes of regulatory development or enforcement. The information obtained will not be used to make major policy decisions. No confidential or sensitive data will be collected under this ICR. This is a pilot project designed to help EPA improve its data collection methods and improve its analyses of the Agency's compliance assistance program.

The assistance provided to the auto-body shop owner/operators in this pilot will include: (1) Basic information about the applicable regulations in the form of fact-sheets and post-cards referring the owner/operators to EPA's website for additional information; (2) informational workshops in the communities where auto-body shops are located; and (3) compliance assistance visits to individual auto-body shops. The offered compliance assistance will focus primarily on the requirements of NESHAP Subpart HHHHHH, which becomes effective in March of 2011. The

pilot will also provide compliance assistance and collect information related to compliance with hazardous waste management provisions of the Resource Conservation and Recovery Act, pollution prevention indicators, and EPA's Collision Repair Campaign's Survey of Shop Practices.

With this pilot, EPA proposes to administer three sets of telephone surveys and two sets of on-site surveys over the course of three years. EPA will identify for study a population (or populations) of Region I auto-body repair shops that share geographic and demographic characteristics. A focus on low income areas is likely. EPA may also identify, for comparison purposes, a population of auto-body shops outside of Region 1 that share geographic and demographic characteristics with the study population in Region 1, but have not been offered compliance assistance like that offered in Region 1. A random sample of this comparison population would be surveyed at the same intervals as surveys are administered in Region 1.

The first set of telephone surveys of the study population will be conducted in the summer of 2009. EPA will collect information both from a random sample of auto-body shops that have been invited to attend a workshop (capturing some who did attend, and some who were invited but did not attend) and from random sample of auto-body shops that were not invited to the workshop that will serve as a comparison group. The telephone survey will be followed by on-site visits to survey a random sample of auto-body shops from the sample populations. The on-site surveys will collect information to assess the shops' then-current environmental performance, validate information collected during a telephone survey, and deliver additional compliance assistance. The second set of telephone surveys at a random sample of auto-body shops in the study population will be conducted in the summer of 2010 to assess the effectiveness of the on-site compliance assistance provided the year before, and to measure changes in auto-body shop behavior.

EPA will conduct the last set of telephone surveys and on-site visits in the spring of 2011. This round of surveys will be conducted at the time of or soon after the NESHAP Subpart HHHHHH March 2011 compliance deadline to assess the final compliance status of a random sample of the study population. On-site visits to a random sample of the study population following this last round of telephone surveys will focus on validating the information collected by the telephone and assessing the degree of compliance.

A respondent's participation in this information collection process will be voluntary. The survey questions are designed to assess whether the assistance provided during the pilot helped the owner/operator understand the applicable environmental regulations, and whether the assistance helped the owner/operator implement operational changes that resulted in improved environmental practices. Improved environmental practices include a change in behavior that resulted in a shop either returning to compliance with regulations or taking steps toward achieving compliance.

Collecting this information will help EPA evaluate the effectiveness of its compliance assistance program by showing if there is a correlation between the compliance assistance provided and an improvement in environmental performance. EPA will also use this information to identify deficiencies and necessary corrective actions in the training, education, and outreach being delivered. In addition to gauging customer satisfaction with the compliance assistance efforts, EPA intends to measure any resulting changes in knowledge or behavior, and evaluate environmental and human health impacts associated with those changes. In particular, the Agency will explore whether observed correlations between behavior changes and assistance provided are statistically valid.

Once EPA completes its analysis of the data collected for this pilot, synthesized findings from the surveys will be shared with the appropriate Agency offices, which may use them to: (a) Identify methods to improve the effectiveness and efficiency of compliance assistance tools and delivery; (b) develop new compliance assistance tools to address identified problem areas; (c) design similar surveys for similar compliance assistance projects; (d) design similar methodologies for program evaluation for similar compliance assistance projects.

EPA anticipates that assessing the results of this pilot and other compliance assistance efforts will lead to improved compliance assistance services and help the Agency explain how such assistance can help support improved environmental management practices. As a result, the information collected as part of compliance assistance assessments could result in improved compliance with environmental regulations.

EPA also collects information about how compliance assistance activities help meet its responsibilities under the

1993 Government Performance Results Act (GPRA) and OMB's Program Assessment Rating Tool (PART). The GPRA requires Federal agencies to develop goals and objectives, measure their performance, and communicate information about their performance to Congress and the public. Under the PART, OMB and Federal agencies assess and improve the agencies' program performance to achieve better results. The PART reinforces the results-oriented performance measurement framework developed under the GPRA.

**Burden Statement:** The annual public reporting and recordkeeping burden for this collection of information is estimated to average \$31.44 for each response to a telephone survey, \$94.33 for each response to a first round on-site survey, and \$62.89 for each response to a second round on-site survey. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated Total Number of Potential Respondents:* 1400.

*Frequency of Response:* On occasion.

*Estimated Total Average Number of Responses for Each Respondent:* 2.

*Estimated Total Annual Burden Hours:* 291.

*Estimated Total Annual Costs:* \$27,450. This includes an estimated burden cost of \$27,450 and an estimated cost of \$0 for capital investment or maintenance and operational costs.

#### **What Is the Next Step in the Process for This ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to

announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 19, 2009.

**Lisa Lund,**

*Director, Office of Compliance.*

[FR Doc. E9-4010 Filed 2-24-09; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8398-8]

### Agency Information Collection Activities; Proposed Renewal of Several Currently Approved Collections; Comment Request

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit requests to renew several currently approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICRs are specifically identified in this document by their corresponding titles, EPA ICR numbers, OMB Control numbers, and related docket identification (ID) numbers. Before submitting these ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collection activities.

**DATES:** Comments must be received on or before April 27, 2009.

**ADDRESSES:** Submit your comments, identified by the docket ID number for the corresponding ICR as identified in this document, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special

arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

**Instructions:** Direct your comments to the docket ID number for the corresponding ICR as identified in this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the docket index available in <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Lily Negash, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 347-8515; fax number: (703) 305-5884; e-mail address: [negash.lily@epa.gov](mailto:negash.lily@epa.gov).

## SUPPLEMENTARY INFORMATION:

### I. What Information is of Particular Interest to the EPA?

Pursuant to section 3506(c) (2) (A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

### II. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline identified under **DATES**.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

### III. What Do I Need to Know About PRA?

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information subject to PRA approval unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the preamble of the final rule, are further displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instruments or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in a list at 40 CFR 9.1.

Under PRA, *burden* means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

### IV. Which ICRs Are Being Renewed?

EPA is planning to submit a number of currently approved ICRs to OMB for review and approval under PRA. In addition to specifically identifying the ICRs by title and corresponding ICR, OMB and docket ID numbers, this unit provides a brief summary of the information collection activity and the Agency's estimated burden. The Supporting Statement for each ICR, a copy of which is available in the corresponding docket, provides a more detailed explanation.

#### A. Docket ID Number EPA-HQ-OPP-2008-0927

*Title:* Tolerance Petitions for Food/Feed Crops and New Inert Ingredients.

*ICR numbers:* EPA ICR No. 0597.10, OMB Control No. 2070-0024.

*ICR status:* The approval for this ICR is scheduled to expire on November 30, 2009.

*Affected entities:* Entities potentially affected by this ICR include individuals or entities engaged in activities related to the registration of a pesticide product, which may be identified by the North American Industrial Classification System (NAICS) code 325320.

*Abstract:* This information collection will enable EPA to collect adequate data to support the establishment of pesticide tolerances pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). A pesticide may not be used on food or feed crops unless EPA has established a tolerance for the pesticide residues on that crop or established an exemption from the requirement to have a tolerance. Responses to this collection are required to obtain tolerances or exemptions from tolerances for pesticides used on food or feed crops, pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104-170). CBI submitted to EPA in response to this information collection is protected from disclosure under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 10.

This ICR only applies to the information collection activities associated with the submission of a petition for a tolerance action. It is EPA's responsibility to ensure that the maximum residue levels likely to be found in or on food/feed crops are safe for human consumption through a careful review and evaluation of residue chemistry and toxicology data. In addition, it must ensure that adequate enforcement of the tolerance can be achieved through the testing of submitted analytical methods. If the data are adequate for EPA to determine that there is a reasonable certainty that no harm will result from aggregate exposure, the Agency will establish the tolerance or grant an exemption from the requirement of a tolerance.

*Burden statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,739 hours per response. The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 103.

*Frequency of response:* As needed.

*Estimated total average number of responses for each respondent:* 1.

*Estimated total annual burden hours:* 179,117.

*Estimated total annual costs:* \$14,712,005. This ICR does not involve any capital investment or maintenance and operational costs.

*Changes in the estimates from the last approval:* The renewal of this ICR will result in an overall decrease of 79,783 hours in the total estimated respondent burden identified in the currently approved ICR. The thirty-one percent decrease from previous years, reflects the average number of tolerance petitions received by EPA in the past three years (2006, 2007, and 2008). This change is an adjustment.

#### B. Docket ID Number EPA-HQ-OPP-2008-0917

*Title:* Standards for Pesticide Containers and Containment.

*ICR numbers:* EPA ICR No. 1632.03, OMB Control No. 2070-0133.

*ICR status:* The approval for this ICR is scheduled to expire on November 30, 2009.

*Affected entities:* Entities potentially affected by this ICR include pesticide registrants and businesses who formulate pesticide products or pesticide formulation intermediates (NAICS code 325320), farm supply wholesalers (NAICS code 422910), swimming pool applicators (classified under NAICS codes 561790, 453998, and 235990), and agricultural (aerial and ground) commercial applicators (classified under NAICS code 115112).

*Abstract:* This information collection request covers the information collection activities associated with the container design and residue removal requirements and containment structure requirements.

With respect to the container design and residue removal requirements, the information collection activities are associated with the requirement that businesses subject to the container regulations (pesticide registrants) and repackaging regulations (pesticide registrants and refillers) maintain records of test data, cleaning procedures, certain data when a container is refilled, and other supporting information. These records are subject to both call-in by EPA and on-site inspection by EPA and its representatives. EPA has not established a regular schedule for the collection of these records, and there is no reporting.

With respect to the containment structure requirements, the information collection activities are associated with the requirement that businesses subject to the containment structure regulations maintain records of the: 1) Monthly inspection and maintenance of each containment structure and all stationary bulk containers; 2) duration over which

non-stationary bulk containers holding pesticide and not protected by a secondary containment unit remain at the same location; and 3) construction date of the containment structure. The businesses subject to the containment structure regulations include agrichemical retailers and refilling establishments, custom blenders and commercial applicators of agricultural pesticides. The records have to be maintained by the owners and operators of such businesses. There is no regular schedule for the collection of either of these records, nor does EPA anticipate a call-in of records at some future date. Instead, the records would be available to inspectors to ensure that businesses are in compliance with containment requirements. These inspections are generally conducted by the states, who enforce FIFRA regulations through cooperative agreements with EPA.

**Burden statement:** The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7.4 hours per response. The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 23,586. This includes 1,804 registrant facilities, 16,795 agricultural pesticide refillers, 322 swimming pool supply companies, and 4,665 facilities requiring secondary containment.

*Frequency of response:* On occasion. There is no regular reporting involved. This ICR only involves recordkeeping requirements.

*Estimated total average number of responses for each respondent:* 1.

*Estimated total annual burden hours:* 174,550.5 hours. This includes 139,563 hours for container design and residue removal requirements and 34,987.5 hours for containment structure requirements.

*Estimated total annual costs:* \$6,124,953. This includes \$4,902,723 for container design and residue removal requirements and \$1,222,230 for containment structure requirements.

*Changes in the estimates from the last approval:* The renewal of this ICR will result in an overall increase of 122,493.5 hours in the total estimated respondent burden identified in the currently approved ICR. When the information collection associated with this ICR was approved in 2006, the burden hours were adjusted to reflect only the burden associated with initial rule familiarization and state requests to use their containment regulations in lieu of Federal regulations - a total of 52,057 hours. These were the only burdens that

were imposed by the pesticide container and containment regulations during the course of that approval. EPA was instructed to revise the estimates, upon resubmission, to reflect the burden imposed in 2009 and beyond because of compliance with the requirements. This change is an adjustment.

#### V. What is the Next Step in the Process for These ICRs?

EPA will consider the comments received and amend the individual ICRs as appropriate. The final ICR packages will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a) (1) (iv) to announce the submission of these ICRs to OMB and the opportunity for the public to submit additional comments for OMB consideration. If you have any questions about any of these ICRs or the approval process in general, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: February 17, 2009.

**James Jones,**

*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*  
[FR Doc. E9-4060 Filed 2-24-09; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2009-0008; FRL-8403-2]

### State Federal Insecticide, Fungicide, and Rodenticide Act; Working Committee's on Environmental Quality Issues and Pesticides Operations Management

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Association of American Pesticide Control Officials (AAPCO)/ State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee's on Environmental Quality Issues and Pesticides Operations Management will hold a 2-day meeting, beginning on April 27, 2009 and ending April 28, 2009. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

**DATES:** The meeting will be held on Monday, April 27, 2009 from 8:30 a.m.

to 5:00 p.m. and 8:30 a.m. to 12 noon on Tuesday April 28, 2009

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

**ADDRESSES:** The meeting will be held at EPA, One Potomac Yard (South Bldg.) 2777 Crystal Dr., Arlington VA. 4th Floor South Conference Room.

**FOR FURTHER INFORMATION CONTACT:** Ron Kendall, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5561 fax number: (703) 308-1850; e-mail address: [kendall.ron@epa.gov](mailto:kendall.ron@epa.gov) or Grier Stayton, SFIREG Executive Secretary, P.O. Box 466, Milford DE 19963; telephone number (302) 422-8152; fax (302) 422-2435; e-mail address: [grierstaytonaapco-sfireg@comcast.net](mailto:grierstaytonaapco-sfireg@comcast.net).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. You are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetics Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

###### B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket ID number EPA-HQ-OPP-2008-0143. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The Docket Facility telephone number is (703) 305-5805.

2. **Electronic access.** You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>.

## II. Background

1. State Updates/Issues
2. NPDES permitting of pesticides
3. Soil fumigant updates
4. Ground and surface water advisories
5. PRN 87-1 chemigation paper
6. Food safety issues and pesticide misuse
7. Non-agricultural pyrethroid advisories
8. Endangered species update
9. Recent NOAA biological opinion
10. Region 5 Community Level benchmark development
11. Web-distributed labeling
12. Green labeling

## III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA-HQ-OPP-2009-0008, must be received on or before April 21, 2009.

## List of Subjects

Environmental protection,

Dated: February 10, 2009.

**William R. Diamond,**

*Director, Field and External Affairs Division, Office of Pesticide Programs.*

[FR Doc. E9-4003 Filed 2-24-09; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8772-9]

### Proposed CERCLA Administrative Cost Recovery Settlement; Camargo Club, Cincinnati, OH

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for

recovery of past response costs concerning the Given Road Lead site in Cincinnati, Ohio with the following settling party: Camargo Club of Cincinnati, Ohio. The settlement requires the settling party to pay \$45,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the following location: Records Center, U.S. EPA, Region 5, 7th Floor, 77 W. Jackson Blvd., Chicago, IL 60604.

**DATES:** Comments must be submitted on or before March 27, 2009.

**ADDRESSES:** The proposed settlement is available for public inspection at the following location: Records Center, U.S. EPA, Region 5, 7th Floor, 77 W. Jackson Blvd., Chicago, IL.

A copy of the proposed settlement may be obtained from Terence Stanuch, Associate Regional Counsel, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Mail Code C-14J, Chicago, Illinois 60604. Comments should reference the Given Road Lead Site in Cincinnati, Ohio and EPA Docket No. V-W-09-C-919 and should be addressed to Terence Stanuch at the EPA address noted above.

**FOR FURTHER INFORMATION CONTACT:** Terence Stanuch, Associate Regional Counsel, 77 West Jackson Blvd., Mail Code C-14J, Chicago, Illinois 60604, (312) 886-8044.

Dated: January 30, 2009.

**Richard C. Karl,**

*Director, Superfund Division.*

[FR Doc. E9-4008 Filed 2-24-09; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL MARITIME COMMISSION

### Meeting; Sunshine Act

**AGENCY HOLDING THE MEETING:** Federal Maritime Commission.

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:**

74 FR 7894 (Feb. 20, 2009).

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:**

February 11, 2009—11 a.m.

### CHANGE:

Correction of a clerical error which caused the publication of the incorrect agenda for the Commission meeting scheduled on February 25, 2009.

**AGENCY HOLDING THE MEETING:** Federal Maritime Commission.

**TIME AND DATE:** February 25, 2009—10 a.m.

**PLACE:** 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

**STATUS:** A portion of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

### MATTERS TO BE CONSIDERED:

#### Open Session

1. Docket No. 02-15 Passenger Vessel Financial Responsibility—Request of Commissioner Brennan.
2. FMC Agreement No. 201200: The Houston Marine Terminal Operators/ Freight Handlers Agreement.
3. FY 2009 Budget Status Report.

#### Closed Session

1. Docket No. 04-09—American Warehousing of New York, Inc. v. The Port Authority of New York and New Jersey; Docket No. 05-03—American Warehousing of New York, Inc. v. The Port Authority of New York and New Jersey.
2. Section 15 Order on Competition, Rates and Service in the U.S.-Australia/New Zealand and Northbound and Southbound Trade.
3. Staff Briefing Regarding Global Economic Downturn and Potential Impact on Stakeholders.
4. Internal Administrative Practices and Personnel Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Karen V. Gregory, Secretary, (202) 523-5725.

**Tanga FitzGibbon,**

*Assistant Secretary.*

[FR Doc. E9-4110 Filed 2-23-09; 4:15 pm]

**BILLING CODE 6730-01-P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

**Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants**

Ocean Blue Express, Inc., 1225 W. 190th Street, Gardena, CA 90248, Officers: Sung Ho Sun, President, (Qualifying Individual).

WP Logistics Inc. dba F.C.C. Logistics Inc., 13025 Cerise Ave., Hawthorne, CA 90250, Officer: Cindy Yamamoto, Secretary, (Qualifying Individual).

LCL Shipping USA, Inc. dba Cargo Planet Logistics, 15117 S. Broadway Street, Gardena, CA 90248, Officer: Tim Mao, CEO, (Qualifying Individual).

**Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants**

Bacarella Transportation Services, Inc., dba BTX Sea Freight, 731 Main Street, Monroe, CT 06468, Officer: Rosario Bacarella, President, (Qualifying Individual).

UT Freight Forwarders Ltd., 161–15 Rockaway Blvd., Jamaica, NY 11434, Officer: Franky Ying K. Fong, Vice President, (Qualifying Individual).

The Scoular Company dba TSC Container Freight, 250 Marquette Ave., Minneapolis, MN 55401, Officer: John A. Messerich, Vice President, (Qualifying Individual). Global Galan Logistics, Inc., 3132 SW 173rd Terrace, Miramar, FL 33029, Officer: George A. Galan, President, (Qualifying Individual).

MJS Trading, Inc., 13350 NW 42nd Ave., Suite 13, Opa Locka, FL 33054, Officer: Emilia V. Vilanueva, President, (Qualifying Individual).

Astral Freight Services, Inc., 1418 NW 82nd Ave., Doral, FL 33126, Officer: Nay Lessa, Vice President, (Qualifying Individual).

Freightplus (USA), Inc., 4466 Karls Gate Drive, Marietta, GA 30068, Officer: Christopher J. Katcher, Secretary, (Qualifying Individual).

Forman Shipping U.S.A. Inc. dba SDS Trans, 145–38 157th Street, 1st Floor, Jamaica, NY 11434, Officer: Si Yualan, President, (Qualifying Individual).

Doma Consolidating Inc. dba Doma Shipping, 2520 S. State Street, Chicago, IL 60616, Officer: Mina A. Georgalas, President, (Qualifying Individual).

Maritime and Intermodal Logistics Systems, Inc., dba MLS Fesco

Logistics, 1000 Second Ave., Seattle, WA 98104, Officer: Junko Altman, Secretary, (Qualifying Individual).

Dated: February 20, 2009.

**Tanga S. FitzGibbon,**  
Assistant Secretary.

[FR Doc. E9–4059 Filed 2–24–09; 8:45 am]

BILLING CODE 6730–01–P

**FEDERAL MARITIME COMMISSION**

[Docket No. 08–07]

**Petition of Olympus Growth Fund III, L.P. and Olympus Executive Fund, L.P. for Declaratory Order, Rulemaking or Other Relief; Request for Comments**

This is to invite comments on or before March 6, 2009, with regard to the Petition described below.

On December 23, 2008 notice was given that Olympus Growth Fund III, L.P. and Olympus Executive Fund, L.P. (“Petitioners”) had petitioned the Federal Maritime Commission (“Commission”) pursuant to 46 CFR 502.51, 68 and 69, for the Commission to: (1) Issue a declaratory order clarifying that the “practice of re-routing the domestic inland transportation leg of a through intermodal shipment” by non-vessel-operating common carriers or other shippers does not violate the Shipping Act of 1984 (“Shipping Act”); (2) initiate a rulemaking to consider these issues; and/or (3) initiate a docketed proceeding with respect to informal compromise procedures said to be underway between Global Link Logistics, Inc. (“Global Link”) and the Commission’s Bureau of Enforcement (“BOE”), and grant Petitioners leave to intervene in the Commission’s investigation thereof.

The Commission’s *Notice of Filing of Petition* requested that Global Link Logistics Inc. and the Bureau of Enforcement submit views or arguments in reply to the Petition no later than January 9, 2009 (74 FR 288, Jan. 5, 2009). In order for the Commission to make a thorough evaluation of the Petition, other interested persons are hereby invited to submit views or arguments in reply to the Petition no later than March 13, 2009. The Commission is particularly interested in comments relating to the rulemaking aspects of the Petition.

Comments shall consist of an original and fifteen (15) copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioners’ counsel, Lewis R. Clayton, of Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue

of the Americas, New York, NY 10019–6064; and Warren L. Dean, Jr., of Thompson Coburn LLP, 1909 K Street, NW., Suite 600, Washington, DC 20006. Comments shall also be submitted in electronic form (Microsoft Word 2003) by e-mail to [secretary@fmc.gov](mailto:secretary@fmc.gov). To review the Petition, the *Notice of Filing of Petition*, or any related documents, visit the Commission’s Web site at [http://www.fmc.gov/reading/activity\\_logs.asp?DOCKET\\_ID=634](http://www.fmc.gov/reading/activity_logs.asp?DOCKET_ID=634). Comments filed in response to this Petition will be posted on the Commission’s Web site at the location shown above.

**Karen V. Gregory,**  
Secretary.

[FR Doc. E9–3965 Filed 2–24–09; 8:45 am]

BILLING CODE 6730–01–P

**FEDERAL MARITIME COMMISSION**

[Docket No. 08–0]

**Petition of Olympus Growth Fund III, L.P. and Olympus Executive Fund, L.P. for Declaratory Order, Rulemaking or Other Relief; Erratum**

In the Notice of Filing of Petition for Docket 08–07, served December 23, 2008 and appearing in the **Federal Register** on January 5, 2009 (74 FR 288), the citation in paragraph 3 is corrected to read “See 46 CFR 502.68(f)(2).”

**Karen V. Gregory,**  
Secretary.

[FR Doc. E9–3966 Filed 2–24–09; 8:45 am]

BILLING CODE 6730–01–P

**FEDERAL RESERVE SYSTEM**

**Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested

persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 20, 2009.

**A. Federal Reserve Bank of Kansas City** (Todd Offerbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *CrossFirst Holdings, LLC*; to become a bank holding company by acquiring 100 percent of the voting shares of CrossPoint Bank, both in Overland Park, Kansas.

In connection with this application, Applicant also has applied to acquire CrossFirst Advisors, LLC Overland Park, Kansas, and thereby engage in financial and investment advisory activities, management consulting, and counseling activities, pursuant to sections 225.25(b)(6) and (b)(9) of Regulation Y.

Board of Governors of the Federal Reserve System, February 20, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9-3983 Filed 2-24-09; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages

either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 10, 2009.

**A. Federal Reserve Bank of Cleveland** (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *Farmers National Banc Corp., Canfield, Ohio*; to acquire 100 percent of the voting shares of Butler Wick Trust Company, Youngstown, Ohio, and thereby engage in general trust activities pursuant to section 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, February 20, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9-3984 Filed 2-24-09; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL TRADE COMMISSION

### Advertising of Books: Enforcement Policy

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Statement of policy.

**SUMMARY:** The Federal Trade Commission rescinds its stated policy that it will not ordinarily challenge claims in advertising that promote the sale of books and other publications when the advertising purports only to express the opinion of the author or to quote—*i.e.*, mirror—the contents of the book or publication.

### FOR FURTHER INFORMATION CONTACT:

Keith R. Fentonmiller, (202) 326-2775, [kfentonmiller@ftc.gov](mailto:kfentonmiller@ftc.gov), or Edward Glennon, (202) 326-3126, [eglennon@ftc.gov](mailto:eglennon@ftc.gov), Attorneys, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** On July 21, 1971, the Commission published its “Advertising in Books” enforcement policy, also known as the Mirror Image Doctrine (hereafter “MID”). The MID enforcement policy provides:

The Commission, as a matter of policy, ordinarily will not proceed against advertising claims which promote the sale of books and other publications: *Provided*, The advertising only purports to express the opinion of the author or to quote the contents of the publication; the advertising discloses the source of statements quoted or derived from the contents of the publication; and the advertising discloses the author to be the source of opinions expressed about the publication. Whether the advice being offered by the publication will achieve, in fact, the results claimed for it in the advertising will not be controlling if appropriate disclosures have been made. This policy does not apply, however, if the publication, or its advertising, is used to promote the sale of some other product as part of a commercial scheme.

Advertising in Books: Enforcement Policy, 36 FR 13,414 (July 21, 1971). By its terms, the MID does not circumscribe the Commission’s inherent authority to proceed against deceptive advertising for books and other publications. Rather, it is a guide for how Commission staff “ordinarily” should approach such advertising.

Five years after the FTC promulgated the MID, the Supreme Court decided that the First Amendment to the U.S. Constitution protects commercial advertising from undue government regulation, albeit not to the same degree as non-commercial speech. In *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976), the Court held that “speech which does ‘no more than propose a commercial transaction’” is commercial speech entitled to some form of First Amendment

although it recognized that the government still may prohibit untruthful or misleading advertising or impose other measures to ensure that ads are not deceptive.<sup>2</sup> In subsequent cases, courts, including the Supreme Court, have held that a commercial advertisement does not necessarily enjoy full First Amendment protection just because it promotes a fully protected product or activity or incorporates statements that, outside the advertising context, are fully protected. *See, e.g., Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 637 & n.7 (1985) (holding that statements contained in an advertisement for legal services regarding the legal rights of persons injured by the Dalkon shield normally would be fully protected speech, but not when presented in the context of an advertisement that proposed a commercial transaction—the offer of legal representation).<sup>3</sup>

The Commission has determined that the MID is unnecessary in light of the Supreme Court's commercial speech jurisprudence developed since the MID's adoption. The Court's commercial speech cases, not the MID, delimit the constitutional constraints on challenges to deceptive advertising claims for books and other publications that are commercially marketed. For the reasons described, the Commission hereby rescinds its "Advertising in Books" enforcement policy.

#### List of Subjects:

Advertising, Consumer protection, Trade practices.

**Authority:** 15 U.S.C. 41-58

By direction of the Commission.

**Donald S. Clark,**  
Secretary.

[FR Doc. E9-3940 Filed 2-24-09; 8:45 am]

**BILLING CODE 6750-01-S**

although meriting some protection, is of less constitutional moment than other forms of speech.'').

<sup>2</sup> 425 U.S. at 771-72 & n.24. *Accord Bates v. State Bar of Arizona*, 433 U.S. 350, 382 (1977) (holding that advertising for legal services is commercial speech and noting that false, deceptive, or misleading advertising of legal services can be prohibited).

<sup>3</sup> *Cf. Rushman v. City of Milwaukee*, 959 F. Supp. 1040, 1043-44 (E.D. Wis. 1997) (holding that the city could not regulate speech of an astrologer, because the targeted speech did not involve the proposal of a commercial transaction: "[A]n astrologer's advice neither proposes nor encourages an additional transaction. In contrast, if [the astrologer] told her clients that they had curses and she could remove them, that would be commercial speech because she would be using astrology to sell her curse-lifting services.'').

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the National Vaccine Advisory Committee Vaccine Safety Working Group

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

**ACTION:** Notice of meeting.

**SUMMARY:** The Department of Health and Human Services (HHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) Vaccine Safety Working Group will hold a meeting. The meeting is open to the public. Pre-registration is required for both public attendance and comment. The event will be webcast live and audio conferencing will be available.

**DATES:** The meeting will be held on March 16, 2009, from 9 a.m. to 5 p.m.

**ADDRESSES:** Department of Health and Human Services; Hubert H. Humphrey Building, Room 800; 200 Independence Avenue, SW., Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kirsten Vannice, National Vaccine Program Office, Department of Health and Human Services, Room 443-H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Phone: (202) 690-5566; Fax: (202) 260-1165; e-mail: [kirsten.vannice@hhs.gov](mailto:kirsten.vannice@hhs.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. Section 300aa-1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The National Vaccine Advisory Committee was established to provide advice and make recommendations to the Director of the National Vaccine Program, on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

The NVAC Vaccine Safety Working Group was initially established to (1) undertake and coordinate a scientific review of the draft Centers for Disease Control and Prevention (CDC) Immunization Safety Office (ISO) Scientific Agenda, and (2) review the current vaccine safety system.

On March 16, 2009, the NVAC Vaccine Safety Working Group will meet to hear comments from stakeholders on the ISO Scientific Agenda. Stakeholder participants will

be asked to comment broadly on two areas: (1) The content of the draft ISO research agenda and (2) approaches for developing priorities for the draft ISO research agenda. Organizations and individuals with a strong interest in vaccine safety are encouraged to attend. Additional guidance and materials will be provided in advance to registered participants. The information collected during this meeting will inform the Working Group on issues and concerns that should be taken into consideration in developing recommendations to be made to NVAC on the ISO scientific agenda.

Public attendance at the meeting is limited to space available and interested individuals are encouraged to register early to secure a space. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person above at least one week prior to the meeting. Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to five minutes per speaker. Pre-registration is required for both public attendance and comment. Any members of the public who wish to have printed material distributed to NVAC Vaccine Safety Working Group members should submit materials to the Executive Secretary, NVAC, through the contact person listed above prior to close of business March 9, 2009. Audio-conferencing will be available. Call in numbers, a draft agenda, a link to the webcast, and additional materials will be posted on the NVAC Vaccine Safety Working Group Web site (<http://www.hhs.gov/nvpo/nvac/vaccinesafety.html>) prior to the meeting.

Dated: February 19, 2009.

**Raymond A. Strikas,**  
Medical Officer, National Vaccine Program Office, U.S. Department of Health and Human Services.

[FR Doc. E9-3977 Filed 2-24-09; 8:45 am]

**BILLING CODE 4150-44-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

#### Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Director, Agency for Healthcare Research and Quality (AHRQ), the authorities vested in the Secretary of the Department of Health and Human Services under Section 204,

of the Medicare Improvements for Patients and Providers Act of 2008, Public Law 110–275, as amended, pertaining to contracting with the Institute of Medicine for reports on best practices for conducting systematic reviews of clinical effectiveness research and for developing clinical protocols.

This delegation shall be exercised in accordance with the Department's applicable policies, procedures, guidelines and regulations.

In addition, the delegation ratifies and affirms any actions taken by you or your subordinates that involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

This delegation is effective upon date of signature.

Dated: February 9, 2009.

**Charles E. Johnson,**

*Acting Secretary.*

[FR Doc. E9–3837 Filed 2–24–09; 8:45 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30Day–09–08BP]

#### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under

review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

**Proposed Project:** Audience Profiling for Carbon Monoxide Poisoning Prevention Status—New—National Center for Environmental Health (NCEH), Coordinating Center for Environmental Health and Injury Prevention (CCEHIP), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

Carbon monoxide (CO) is one of the leading causes of poison-related deaths in the United States. The Centers for Disease Control and Prevention (CDC) estimates that each year approximately 500 people die of unintentional, nonfire-related CO exposure, and another 15,000 individuals visit emergency rooms for treatment from exposure to CO gas.

Despite our current knowledge of scenarios and products that lead to CO poisoning, questions remain about when and how individuals use CO-emitting products, why they engage in certain risk behaviors, how best to inform them about the CO poisoning, and how receptive they are to existing prevention

materials. This study aims to address these questions through assessing the basis for current audience knowledge, attitudes, and practices and, ultimately, strengthen educational materials about CO poisoning prevention.

The study will employ the use of qualitative methods during three phases of data collection. Phase I will consist of eight in-person focus groups among home furnace owners and portable generator owners (n = 64) as well as four telephone interviews with organizations that serve populations at risk for CO poisoning (n = 4). Phase II will consist of analyzing previously collected data on consumer media usage and preferences. Phase III will consist of 16 in-person triad interviews (3 individuals per interview) with home furnace owners and portable generator owners (n = 48) to pretest CO poisoning educational materials.

NCEH will identify individuals for the focus groups and triad interviews using recruiting firms that specialize in the two at-risk populations: (1) Home furnace owners and (2) portable generator owners. Individuals in these two groups will be screened over the telephone by the recruiting firms, and if they meet the eligibility criteria, will be invited to participate in the study. At the end of each focus group and triad interview, NCEH will ask participants to complete a brief exit questionnaire on demographics and media usage.

There is no cost to respondents other than their time. The total estimated burden hours are 276.

#### ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Instrument type	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Owners of Gas or Oil Burning Household Appliances.	Focus Group Screener .....	64	1	10/60
	Focus Group .....	32	1	2
	Exit Questionnaire .....	32	1	10/60
	Triad Screener .....	48	1	10/60
	Triad .....	24	1	2
Owners of Portable Gas Burning Generator	Focus Group Screener .....	64	1	10/60
	Focus Group .....	32	1	2
	Exit Questionnaire .....	32	1	10/60
	Triad Screener .....	48	1	10/60
	Triad .....	24	1	2
Expert .....	Telephone Interview .....	4	1	1

Dated: February 13, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9-3999 Filed 2-24-09; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day-09-09AW]

#### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an email to [omb@cdc.gov](mailto:omb@cdc.gov).

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

#### Proposed Project

Measuring Preferences for Quality of Life for Child Maltreatment—New—National Center for Injury Prevention and Control (NCIPC), Division of Violence Prevention (DVP), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

The CDC requests approval of a study and subsequent survey fielding to measure the quality-of-life (QoL) impacts resulting from child maltreatment (CM) using a quantitative, preference-based approach. The U.S. Department of Health and Human Services, among many others, has identified child maltreatment as a serious U.S. public health problem with substantial long-term physical and psychological consequences. Despite considerable research on the consequences of CM in adult survivors, few studies have utilized standard QoL techniques and none have quantified childhood QoL impacts. This gap in the literature means the full QoL burden of CM has not been measured inhibiting the evaluation and comparison of CM intervention programs. This study will improve public health knowledge and economic evaluation of the QoL impacts of physical and sexual CM, including

effects specific to juvenile and adolescent survivors, through the development and fielding of a preference-based survey instrument.

CDC has contracted with RTI International to develop and field a survey instrument to measure the QoL impacts of child maltreatment. RTI will develop the instrument based on standardized QoL methods, existing instruments, a literature review of CM outcomes, and qualitative research techniques. The final instrument will be fielded to a national sample and data analyzed to measure the impacts of CM. Survey development will include interviews with both clinician proxies for adolescent survivors and CM survivors, as well as focus groups with same-sex adult CM survivors.

The instrument will be pretested to an online national sample of all U.S. adults. After pretesting, the final survey will be fielded to a nationally-representative sample of 2000 U.S. adults. The survey will focus on QoL measures of preferences and contain limited questions on past CM exposure to identify possible CM survivors. The national sample will be representative of the U.S. population and include a significant number of CM survivors so that preferences can be estimated separately based on past CM exposure.

Final results will provide an estimate of the quality-of-life burden of child maltreatment in the United States. Analysis and results of the survey data will be used to inform the public health community of the impact of CM, and to evaluate and compare CM intervention programs.

There are no costs to respondents other than their time.

#### ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Same-sex adult CM survivors .....	Focus groups .....	50	1	1.5	75
U.S. Adults .....	Pretest interviews .....	15	1	1.5	23
	Pilot Instrument .....	100	1	20/60	34
	National Sample .....	2000	1	20/60	667
Clinicians .....	In-depth interviews .....	15	1	1	15
Total .....	.....	.....	.....	.....	814

Dated: February 13, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9-4000 Filed 2-24-09; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Board of Scientific Counselors, National Center for Public Health Informatics (BSC, NCPHI)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the CDC announces the following meeting of the aforementioned committee:

*Time and Date:* 12 p.m.–2 p.m., March 20, 2009.

*Place:* The teleconference call will originate at the CDC; to participate in the teleconference, please dial 1 (866) 713-5586 and enter conference code 4624038.

*Status:* Open to the public; teleconference access limited only by availability of telephone ports.

*Purpose:* The board will meet to conduct BSC, NCPHI business.

*Matters To Be Discussed:* To discuss BSC, NCPHI-related matters including: NCPHI portion of the stimulus package; update on BioSense; re-formation of three working groups; and planning for the May 26, 2009 meeting in Orlando, Florida.

Agenda items are subject to change as priorities dictate.

*For Further Information Contact:* Dr. Scott McNabb, National Center for Public Health Informatics, CDC, 1600 Clifton Road, NE., (E-78), Atlanta, Georgia 30333, Telephone (404) 498-6427, Fax (404) 498-6235.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 13, 2009.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. E9-4001 Filed 2-24-09; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifier: CMS-838, CMS-10267 and CMS-339]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Credit Balance Reporting Requirements and Supporting Regulations in 42 CFR 405.371, 405.378 and 413.20; *Use:* Section 1815(a) of the Act authorizes the Secretary to request information from providers which is necessary to properly administer the Medicare program. Quarterly credit balance reporting is needed to monitor and control the identification and timely collection of improper payments. The information obtained from Medicare credit balance reports will be used by the contractors to identify and recover outstanding Medicare credit balances and by Federal enforcement agencies to protect Federal funds. The information will also be used to identify the causes of credit balances and to take corrective action. *Form Number:* CMS-838 (OMB# 0938-0600); *Frequency:* Yearly; *Affected Public:* Private sector—business or other for-profits; *Number of Respondents:* 52,380; *Total Annual Responses:* 209,520; *Total Annual Hours:* 628,560. (For policy questions regarding this collection contact: Milton Jacobsen at

410-786-7553. For all other issues call 410-786-1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* CROWNWeb Authentication Service (CAS) Account Form; *Form Number:* CMS-10267 (OMB#: 0938-1050); *Use:* The Consolidated Renal Operations in a Web Enabled Network (CROWNWeb) Authentication Service (CAS) application must be completed by any person needing access to the CROWNWeb system which includes CMS employees, ESRD Network Organization staff and dialysis facilities staff. The CROWNWeb system is the system used as the collection point of data necessary for entitlement of ESRD patients to Medicare benefits and Federal Government monitoring and assessing of quality and type of care provided to renal patients. The data collected in CAS will provide the necessary security measures for creating and maintaining active CROWNWeb user accounts and collection of audit trail information required by the CMS Information Security Officers (ISSO). *Frequency:* Reporting—One-time; *Affected Public:* Business or other for-profit, not-for-profit; *Number of Respondents:* 15,600; *Total Annual Responses:* 15,600; *Total Annual Hours:* 7,800. (For policy questions regarding this collection contact: Michelle Tucker at 410-786-0376. For all other issues call 410-786-1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Provider Cost Report Reimbursement Questionnaire; *Use:* Form CMS-339 must be completed by all providers that submit full cost reports to the Medicare intermediary under Title XVIII of the Social Security Act. It is designed to answer pertinent questions about key reimbursement concepts found in the cost report and to gather information necessary to support certain financial and statistical entries on the cost report. The questionnaire is used by the Medicare intermediaries as a tool to help them arrive at a prompt and equitable settlement of all of the various types of provider cost reports (hospitals, skilled nursing facilities (SNFs), home health agencies (HHAs), etc.) and sometimes preclude the need for a comprehensive on-site audit. *Form Number:* CMS-339 (OMB# 0938-0301); *Frequency:* Annually; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 38,429; *Total Annual Responses:* 38,429; *Total Annual Hours:*

431,148. (For policy questions regarding this collection contact: Christine Dobrzycki at 410-786-3389. For all other issues call 410-786-1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@cms.hhs.gov](mailto:Paperwork@cms.hhs.gov), or call the Reports Clearance Office at (410) 786-1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on March 27, 2009.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395-6974.

Dated: February 12, 2009.

**Michelle Shortt,**

*Director, Regulations Development Group,  
Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E9-3937 Filed 2-24-09; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### Submission for OMB Review; Comment Request

*Title:* Child Care Quarterly Case Record Report—ACF-801.

*OMB No.:* 0970-0167.

*Description:* Section 658K of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101-508, 42 U.S.C. 9858) requires that States and Territories submit monthly case-level data on the children and families receiving direct services under the Child Care and Development Fund. The

implementing regulations for the statutorily required reporting are at 45 CFR 98.70. Case level reports, submitted quarterly or monthly (at grantee option), include monthly sample or full population case level data. The data elements to be included in these reports are represented in the ACF-801. ACF uses disaggregate data to determine program and participant characteristics as well as costs and levels of child care services provided. This provides ACF with the information necessary to make reports to Congress, address national child care needs, offer technical assistance to grantees, meet performance measures, and conduct research. Consistent with the statute and regulations, ACF requests extension of the ACF-801. With this extension, ACF is proposing several changes and clarifications to the reporting requirements and instructions.

*Respondents:* States, the District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

#### ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF-801 .....	56	4	20	4,480

Estimated Total Annual Burden Hours: 4,480

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov).

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: February 17, 2009.

**Janean Chambers,**

*Reports Clearance Officer.*

[FR Doc. E9-3834 Filed 2-24-09; 8:45 am]

**BILLING CODE 4184-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2009-N-0075]

#### Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device Reporting; Manufacturer, Importer, User Facility, and Distributor Reporting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register**

concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on medical device reporting (MDR); manufacturer, importer, user facility, and distributor reporting.

**DATES:** Submit written or electronic comments on the collection of information by April 27, 2009.

**ADDRESSES:** Submit electronic comments on the collection of information to: <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Jr., Office of Information Management (HFA-710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-796-3793.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether the information will have practical utility; (2) the accuracy of FDA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4)

ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Medical Device Reporting: Manufacturer, Importer, User Facility, and Distributor Reporting—21 CFR Part 803 (OMB Control Number 0910–0437)—Extension**

Section 519(a)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(a)(1)) requires every manufacturer or importer to report “whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices: (A) May have caused or contributed to a death or serious injury, or (B) has malfunctioned and that such device or a similar device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur \* \* \*.”

Section 519(b)(1)(A) of the act requires “whenever a device user facility receives or otherwise becomes aware of information that reasonably suggests that a device has or may have caused or contributed to the death of a patient of the facility, the facility shall, as soon as practicable but not later than 10 working days after becoming aware of the information, report the

information to the Secretary and, if the identity of the manufacturer is known, to the manufacturer of the device.”

Section 519(b)(1)(B) of the act requires “whenever a device user facility receives or otherwise becomes aware of: (i) Information that reasonably suggests that a device has or may have caused or contributed to the serious illness of, or serious injury to, a patient of the facility \* \* \*, shall, as soon as practicable but not later than 10 working days after becoming aware of the information, report the information to the manufacturer of the device or to the Secretary if the identity of the manufacturer is not known.”

Complete, accurate, and timely adverse event information is necessary for the identification of emerging device problems. Information from these reports will be used to evaluate risks associated with medical devices which will enable FDA to take appropriate regulatory measures in protection of the public health under section 519 of the act. Thus FDA is requesting approval for these information collection requirements which are being implemented under part 803 (21 CFR part 803).

Respondents to this collection of information are businesses or other for-profit and nonprofit organizations including user facilities, manufacturers, and importers of medical devices.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

21 CFR Section	FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
803.19		57	4	228	3.0	684
803.30 and .32		393	2	777	1.0	777
803.33	3419	393	1	393	1	393
803.40 and .42		73	37	2,682	1.0	2,682
803.50 and .52		1,601	104	166,271	1.0	166,271
803.56		1,200	63	76,186	1.0	76,186
Total				246,537		246,993

<sup>1</sup> There are no capital or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
803.17	220	1	220	10	2,200
803.18 (a) through (d)	30,000	1	30,000	1.5	45,000
Total					47,200

<sup>1</sup> There are no capital or operating and maintenance costs associated with this collection of information.

Part 803 requires user facilities to report to the device manufacturer and to FDA in case of a death, incidents where a medical device caused or contributed to a death or serious injury. Additionally, user facilities are required to annually submit the number and summary of adverse events reported during the calendar year, using FDA Form 3419. Manufacturers of medical devices are required to report to FDA when they become aware of information indicating that one of their devices may have caused or contributed to death or serious injury or has malfunctioned in such a way that should the malfunction recur it would be likely to cause or contribute to a death or serious injury. Device importers report deaths and serious injuries to the manufacturers and FDA. Importers report malfunctions only to the manufacturers, unless they are unknown, then the reports are sent to FDA.

The number of respondents for each CFR section in table 1 of this document is based upon the number of respondents entered into FDA's internal databases. FDA estimates, based on its experience and interaction with the medical device community, that all reporting CFR sections are expected to take 1 hour to complete, with the exception of § 803.19. Section 803.19 is expected to take approximately 3 hours to complete, but is only required for reporting the summarized data quarterly to FDA. By summarizing events, the total time used to report for this section is reduced because the respondents do not submit a full report for each event they report in a quarterly summary report.

The agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information to meet the MDR requirements as part of their internal quality control system. There are an estimated 30,000 medical device distributors. Although they do not submit MDR reports, they must maintain records of complaints, under § 803.18(d).

The agency has estimated that on average 220 user facilities, importers, and manufacturers would annually be required to establish new procedures, or revise existing procedures, in order to comply with this provision.

Therefore, FDA estimates the one-time burden to respondents for establishing or revising procedures under § 803.17 to be 2,200 hours (220 respondents x 10 hours). For those entities, a one-time burden of 10 hours is estimated for establishing written MDR procedures. The remaining

manufacturers, user facilities, and importers, not required to revise their written procedures to comply with this provision, are excluded from the burden because the recordkeeping activities needed to comply with this provision are considered "usual and customary" under 5 CFR 1320.3(b)(2).

Under § 803.18, 30,000 respondents represent distributors, importers, and other respondents to this information collection. FDA estimates that it should take them approximately 1.5 hours to complete the recordkeeping requirement for this section. Total hours for this section equal 45,000 hours.

Dated: February 19, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9-4057 Filed 2-24-09; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2009-N-0050]

#### Agency Information Collection Activities; Proposed Collection; Comment Request; Importer's Entry Notice

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's need to collect additional information in the Importer's Entry Notice.

**DATES:** Submit written or electronic comments on the collection of information by April 27, 2009.

**ADDRESSES:** Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All

comments should be identified with the docket number found in brackets in the heading of this document.

#### FOR FURTHER INFORMATION CONTACT:

Elizabeth G. Berbakos, Office of Information Management (HFA-710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-796-3792.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

#### Importer's Entry Notice (OMB Control Number 0910-0046-Extension)

In order to make an admissibility decision for each entry, FDA needs four additional pieces of information that are not available in the U.S. Customs and Border Protection's (CBP's) data set. These data elements are the FDA Product Code, FDA country of production, FDA manufacturer/shipper, and ultimate consignee. It is the "automated" collection of these four data elements for which OMB approval is requested. FDA construes this request

as an extension of the prior approval of collection of this data via a different media, i.e., paper. There are additional data elements that filers can provide to FDA along with other entry-related information that, by doing so, may result in their receiving an FDA admissibility decision more expeditiously, e.g., the quantity, value, and Affirmation(s) of Compliance with Qualifier(s).

At each U.S. port of entry (seaport, landport, and airport) where foreign-origin FDA-regulated products are offered for import, FDA is notified through CBP's Automated Commercial System (ACS) by the importer (or his agent) of the arrival of each entry. Following such notification FDA reviews relevant data to ensure the imported product meets the standards as are required for domestic products, makes an admissibility decision, and informs the importer and CBP of its decision. A single entry frequently contains multiple lines of different

products. FDA may authorize specific lines to enter the U.S. unimpeded, while others in the same entry are to be held pending further FDA review/action.

An important feature developed and programmed into FDA's automated system is that all entry data passes through a screening criteria program. FDA's electronic screening criteria module makes the initial screening decision on every entry of foreign-origin FDA-regulated product. Virtually instantaneously after the entry is filed, the filer receives FDA's admissibility decision covering each entry, i.e., "MAY PROCEED" or "FDA REVIEW."

Examples of FDA's need to further review an entry include: Products originating from a specific country or manufacturer known to have a history of problems, FDA has no previous knowledge of the foreign manufacturer and/or product, and an import alert covering the product has been issued, etc. The system assists FDA entry reviewers by notifying them of

information such as the issuance of import alerts, thus averting the chance that such information will be missed. With the inception of the interface with CBP's ACS, FDA's electronic screening criteria program is applied nationwide. This virtually eliminates problems such as "port shopping," e.g., attempts to intentionally slip products through one FDA port when refused by another, or to file entries at a port known to receive a high volume of entries. Every electronically submitted entry line of foreign-origin FDA-regulated product undergoes automated screening described previously in this document. The screening criteria can be set to be as specific or as broad as applicable; changes are virtually immediately effective. This capability is of tremendous value in protecting the public in the event there is a need to immediately halt a specific product from entering the United States. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3,727	1,070	3,988,371	.263	1,048,447

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 17, 2009.  
**Jeffrey Shuren,**  
*Associate Commissioner for Policy and Planning.*  
[FR Doc. E9-3938 Filed 2-24-09; 8:45 am]  
**BILLING CODE 4160-01-S**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**Health Resources and Services Administration**  
**Statement of Delegation of Authority**

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration certain authorities vested in the Secretary, Health and Human Services (HRSA) under Section 307(C), Title III of the Denali Commission Act of 1998, as amended hereafter, pertaining to the Denali Commission's Demonstration Health Projects. This delegation shall be exercised in accordance with the Department's applicable policies, procedures and guidelines relating to regulations. In addition, I have affirmed and ratified any actions taken by the HRSA Administrator, or other HRSA officials, which involved the exercise of these

authorities prior to the effective date of this delegation. This delegation is effective upon date of signature. Dated: February 9, 2009.  
**Charles E. Johnson,**  
*Acting Secretary.*  
[FR Doc. E9-3838 Filed 2-24-09; 8:45 am]  
**BILLING CODE 4165-15-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**Health Resources and Services Administration**  
**Statement of Delegation of Authority**

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration, certain authorities vested in the Secretary of Health and Human Services under Section 219 of Public Law 110-161, as amended hereafter, pertaining to the Delta Health Initiative. These authorities may be redelegated. This delegation excludes the authority to issue regulations and to submit reports to Congress, and shall be exercised in accordance with the

Department's applicable policies, procedures, and guidelines. In addition, I have affirmed and ratified any actions taken by the Administrator, or other HRSA officials, which involved the exercise of these authorities prior to the effective date of this delegation. This delegation is effective upon date of signature. Dated: February 9, 2009.  
**Charles E. Johnson,**  
*Acting Secretary.*  
[FR Doc. E9-3842 Filed 2-24-09; 8:45 am]  
**BILLING CODE 4165-15-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**Indian Health Service**  
**Indian Health Professions Preparatory, Indian Health Professions Pregraduate and Indian Health Professions Scholarship Programs**  
*Announcement Type:* Initial.  
*CFDA Numbers:* 93.971, 93.123, and 93.972.  
*Key Dates:*  
*Application Deadline:* February 28, 2009, for Continuing students.

*Application Deadline:* March 28, 2009, for New students.

*Application Review:* May 4–8, 2009.

*Application Notification:* First week of July, 2009.

*Award Start Date:* August 1, 2009.

## I. Funding Opportunity Description

The Indian Health Service (IHS) is committed to encouraging American Indians and Alaska Natives to enter the health professions and to assuring the availability of Indian health professionals to service Indians. The IHS is committed to the recruitment of students for the following programs:

- The Indian Health Professions Preparatory Scholarship authorized by section 103 of the Indian Health Care Improvement Act (IHCIA), as amended.
- The Indian Health Professions Pregraduate Scholarship authorized by section 103 of the IHCIA, as amended.
- The Indian Health Professions Scholarship authorized by section 104 of the IHCIA, as amended.

Full-time and part-time scholarships will be funded for each of the three scholarship programs.

## II. Award Information

Awards under this initiative will be administered using the grant mechanism of the IHS.

**Estimated Funds Available:** An estimated \$14.0 million will be available for FY 2009 awards. The IHS program anticipates, but cannot guarantee, due to possible funding changes, student scholarship selections from any or all of the following disciplines in the 103, 103P and 104 Programs for the Scholarship Period 2009–2010. Anticipated Number of Awards: Approximately 127 awards will be made under the Health Professions Preparatory and Pregraduate Scholarship Programs for Indians. The awards are for ten months in duration and the average award to a full-time student is approximately \$29,171. An estimated 210 awards will be made under the Indian Health Professions Scholarship Program. The awards are

for 12 months in duration and the average award to a full-time student is approximately \$54,262. In FY 2009, an estimated \$9,000,000 is available for continuation awards, and an estimated \$5,000,000 is available for new awards.

**Project Period—**The project period for the Health Professions Preparatory Scholarship support is limited to two years for full-time students and the part-time equivalent of two years, not to exceed four years for part-time students. The project period for the Health Professions Pregraduate Scholarship support is limited to four years for full-time students and the part-time equivalent of four years, not to exceed eight years for part-time students. The Indian Health Professions Scholarship support is limited to four years for full-time students and the part-time equivalent of four years, not to exceed eight years for part-time students.

## III. Eligibility Information

This announcement is a limited competition for awards made to American Indians (Federally recognized Tribal members, state recognized Tribal members, and first and second degree descendants of state recognized Tribal members), or Alaska Natives only.

### 1. Eligible Applicants

The Health Professions Preparatory Scholarship awards are made to American Indians (Federally recognized Tribal members, first and second degree descendants of Tribal members, and state recognized Tribal members, first and second degree descendants of Tribal members), or Alaska Natives who:

- Have successfully completed high school education or high school equivalency;
- Have been accepted for enrollment in a compensatory, pre-professional general education course or curriculum; and

The Health Pregraduate Scholarship awards are made to American Indians (Federally recognized Tribal members, first and second degree descendants of Tribal members, and state recognized

Tribal members, first and second degree descendants of Tribal members), or Alaska Natives who:

- Have successfully completed high school education or high school equivalency; and
- Have been accepted for enrollment or are enrolled in an accredited pregraduate program leading to a baccalaureate degree in pre-medicine, pre-dentistry, pre-podiatry or pre-optometry.

The Indian Health Professions Scholarship may be awarded only to an individual who is a member of a Federally recognized Indian Tribe or Alaska Native as provided by section 4(c) and 4(d) of the IHCIA. Membership in a Tribe recognized only by a state does not meet this statutory requirement. To receive an Indian Health Professions Scholarship, an otherwise eligible individual must be enrolled in an appropriately accredited school and pursuing a course of study in a health profession as defined by section 4(n) of the IHCIA.

### 2. Cost Sharing/Matching

The Scholarship Program does not require matching funds or cost sharing to participate in the competitive grant process.

## IV. Application Submission Information

### 1. Address to Request Application Package

Applicants are responsible for contacting and requesting an application packet from their IHS Area Scholarship Coordinator. They are listed on the IHS Web site at [http://www.ihs.gov/JobCareerDevelop/DHPS/Scholarships/SCoordinator\\_Directory.asp](http://www.ihs.gov/JobCareerDevelop/DHPS/Scholarships/SCoordinator_Directory.asp). This information is listed below. Please review the following list to identify the appropriate IHS Area Scholarship Coordinator for your State. Application packets may be obtained by calling or writing to the following individuals listed below:

IHS area office and states/locality served	Scholarship coordinator address
Aberdeen Area IHS: Iowa Nebraska North Dakota South Dakota	Ms. Kim Annis, IHS Area Scholarship Coordinator, Aberdeen Area IHS, 115 4th Avenue, SE, Aberdeen, SD 57401, Tele: (605) 226–7466.
Alaska Native Tribal Health Consortium: Alaska	Ms. Krista Ruesch, Alternate: Ms. Wendy Perrell, IHS Area Scholarship Coordinator, 4000 Ambassador Drive, Anchorage, AK 99508, Tele: (907) 729–1348 or (907) 729–1352, 1–800–684–8361 (toll free).
Albuquerque Area IHS: Colorado New Mexico	Ms. Cora Boone, IHS Area Scholarship Coordinator, Albuquerque Area IHS, 5300 Homestead Road, NE, Albuquerque, NM 87110, Tele: (505) 248–4418.

IHS area office and states/locality served	Scholarship coordinator address
Bemidji Area IHS: Illinois Indiana Michigan Minnesota Wisconsin	Mr. Tony Buckanaga, IHS Area Scholarship Coordinator, Bemidji Area IHS, 522 Minnesota Avenue, NW, Room 209, Bemidji, MN 56601, Tele: (218) 444-0486.
Billings Area IHS: Montana Wyoming	Mr. Delon Rock Above, Alternate: Ms. Bernice Hugs, IHS Area Scholarship Coordinator, Billings Area IHS, Area Personnel Office, P.O. Box 36600, 2900 4th Avenue, North, Suite 400, Billings, MT 59103, Tele: (406) 247-7100.
California Area IHS: California Hawaii	Ms. Mona Celli, IHS Area Scholarship Coordinator, California Area IHS, 650 Capitol Mall, Suite 7-100, Sacramento, CA 95814, Tele: (916) 930-3981.
Nashville Area IHS: Alabama Arkansas Connecticut Delaware Florida Georgia Kentucky Louisiana Maine Maryland Virginia Mississippi District of Columbia New Hampshire New Jersey New York North Carolina Ohio Pennsylvania Rhode Island South Carolina Tennessee Vermont West Virginia Massachusetts	Ms. Gina Blackfox, IHS Area Scholarship Coordinator, Nashville Area IHS, 711 Stewarts Ferry Pike, Nashville, TN 37214, Tele: (615) 467-1500.
Navajo Area IHS: Arizona New Mexico Utah	Ms. Roselinda Allison, IHS Area Scholarship Coordinator, Navajo Area IHS, P.O. Box 9020, Window Rock, AZ 86515, Tele: (928) 871-1358.
Oklahoma City Area IHS: Kansas Missouri Oklahoma	Ms. Melissa Langley, IHS Area Scholarship Coordinator, Oklahoma City Area IHS, Five Corporate Plaza, 3625 N.W. 56th Street, Oklahoma City, OK 73112, Tele: (405) 951-6040.
Phoenix Area IHS: Arizona Nevada Utah	Ms. Kimberly Honahnie, IHS Area Scholarship Coordinator, Phoenix Area IHS, Two Renaissance Square, 40 North Central Avenue, Suite 510, Phoenix, AZ 85004, Tele: (602) 364-5253.
Portland Area IHS: Idaho Oregon Washington	Ms. Laurie Veitenheimer, IHS Area Scholarship Coordinator, Portland Area IHS, 1220 S.W. Third Avenue, Room 476, Portland, OR 97204-2892, Tele: (503) 326-6983.
Tucson Area IHS: Arizona Texas	Ms. Kimberly Honahnie (See Phoenix Area).

### 1. Content and Form Submission

Each applicant will be responsible for submitting a completed application (Forms IHS-856-1, through 856-8) and one copy to their IHS Area Scholarship Coordinator. Electronic applications are being accepted for this cycle. Go to [www.scholarship.ihs.gov](http://www.scholarship.ihs.gov) for more information on how to apply electronically. The application will be considered complete if the following

documents (original and one copy) are included.

- Completed and signed application Checklist.
- Original Signed complete application form IHS-856 (for continuation students—Data Sheet in place of IHS-856).
- Current Letter of Acceptance from College/Proof of application to Health Professions Program.

- Official transcripts for all colleges (or high school transcripts for applicants who have not taken college courses).

- Cumulative GPA: Applicants calculations.

- Documents for Indian Eligibility.

A. If you are a member of a Federally recognized Tribe or Alaska Native (recognized by the Secretary of the Interior), provide evidence of membership such as:

(1) Certification of Tribal enrollment by the Secretary of the Interior, acting through the Bureau of Indian Affairs (BIA Certification: Form 4432—Category A or D, whichever is applicable); or

(2) In the absence of BIA certification, documentation that you meet requirements of Tribal membership as prescribed by the charter, articles of incorporation or other legal instrument of the Tribe and have been officially designated as a Tribal member as evidenced by an accompanying document signed by an authorized Tribal official; or

(3) Other evidence of Tribal membership satisfactory to the Secretary of the Interior.

B. If you are a member of a Tribe terminated since 1940 or a State recognized Tribe and first or second degree descendant, provide official documentation that you meet the requirements of Tribal membership as prescribed by the charter, articles of incorporation or other legal instrument of the Tribe and have been officially designated as a Tribal member as evidenced by an accompanying document signed by an authorized Tribal official; or other evidence, satisfactory to the Secretary of the Interior, that you are a member of the Tribe. In addition, if the terminated or state recognized Tribe of which you are a member is not on a list of such Tribes published by the Secretary of the Interior in the **Federal Register**, you must submit an official signed document that the Tribe has been terminated since 1940 or is recognized by the state in which the Tribe is located in accordance with the law of that state.

C. If you are not a Tribal member but are a natural child or grandchild of a Tribal member, from a Federally recognized tribe, you must submit: (1) Evidence of that fact, *e.g.*, your birth certificate and/or your parent's birth certificate showing the name of the Tribal member; and (2) evidence of your parent's or grandparent's Tribal membership in accordance with paragraphs A and B. The relationship to the Tribal member must be clearly documented. Failure to submit the required documentation will result in the application not being accepted for review.

**Note:** If you meet the criteria of B or C you are eligible only for the Preparatory or Pregraduate Scholarships.

- Two Faculty/Employee Evaluations with original signature.
- Reasons for Requesting the Scholarship.
- Delinquent Debt Form.

- 2009 W-4 Form with original signature.
- Course Curriculum Verification with original signature.
- Acknowledgement Card.
- Curriculum for Major.
- Health Professions Applicants Only:*
- Health Related Experience (MPH only)—Optional Form.

### 3. Submission Dates and Times

Application Receipt Date: The application deadline for new applicants is Saturday, March 28, 2009.

Applications (original and one copy) shall be considered as meeting the deadline if they are received by the appropriate IHS Area Scholarship Coordinator on the deadline date or postmarked on or before the deadline date. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing and will not be considered for funding. Once the application is received, the applicant will receive an "Acknowledgement of Receipt of Application" (IHS-815) card that is included in the application packet.

### 4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

### 5. Funding Restrictions

No more than 5% of available funds will be used for part-time scholarships this fiscal year. Students are considered part-time if they are enrolled for a minimum of six hours of instruction and are not considered in full-time status by their college/university. Documentation must be received from part-time applicants that their school and course curriculum allows less than full-time status. Both part-time and full-time scholarship awards will be made in accordance with 42 CFR Parts 136.320, 136.330 and 136.370 incorporated in the application materials; and for Health Professions Scholarship Program for Indians.

### 6. Other Submissions Requirements

New Applicants are responsible for contacting and requesting an application packet from their IHS Area Scholarship Coordinator. The Division of Grant Operations will mail continuation students an application packet. If you do not receive this information please contact your IHS Area Scholarship Coordinator to request a continuation application.

Continuing students must submit a complete application (original plus one copy) and meet the deadline of Saturday, February 28, 2009; there will be no exceptions.

## V. Application Review Information

### 1. Criteria

Applications will be reviewed and scored with the following criteria.

- Needs of the IHS (health personnel needs in Indian Country) (30 points)

Applicants are considered for scholarship awards based on their desired career goals and how these goals relate to current Indian health personnel needs. Applications for each health career category are reviewed and ranked separately.

- Academic Performance (40 points)

Applicants are rated according to their academic performance as evidenced by transcripts and faculty evaluations. In cases where a particular applicant's school has a policy not to rank students academically, faculty members are asked to provide a personal judgment of the applicant's achievement. Health Professions applicants with a cumulative GPA below 2.0 are not eligible for award.

- Faculty/Employer Recommendations (30 points)

Applicants are rated according to evaluations by faculty members, current and/or former employers and Tribal officials regarding the applicant's potential in the chosen health related professions.

- Stated Reasons for Asking for the Scholarship and Stated Career Goals (30 points)

Applicants must provide a brief written explanation of reasons for asking for the scholarship and of their career goals. The applicant's narrative will be judged on how well it is written and its content.

- Applicants who are closest to graduation or completion of training are awarded first. For example, senior and junior applicants under the Health Professions Pregraduate Scholarship receives funding before freshmen and sophomores.

- Priority Categories

The following is a list of health professions that will be considered for funding in each scholarship program in FY 2009.

- Indian Health Professions Preparatory Scholarships

A. Pre-Clinical Psychology (Jr. and Sr. undergraduate years).

B. Pre-Dietetics (Jr. and Sr. undergraduate years).

C. Pre-Medical Technology (Jr. and Sr. undergraduate years).

D. Pre-Nursing.  
 E. Pre-Occupational Therapy.  
 F. Pre-Pharmacy.  
 G. Pre-Physical Therapy (Jr. and Sr. undergraduate years).  
 H. Pre-Social Work (Jr. and Sr. undergraduate years).  
 • Indian Health Professions Pregraduate Scholarships  
 A. Pre-Dentistry.  
 B. Pre-Medicine.  
 C. Pre-Podiatry.  
 D. Pre-Optometry.  
 • Indian Health Professions Scholarship  
 A. Chemical Dependency Counseling: Baccalaureate and Master's Level.  
 B. Clinical Psychology: PhD Program.  
 C. Dental Hygiene: B.S.  
 D. Dentistry: D.D.S. and D.M.D.  
 E. Diagnostic Radiology Technology: Certificate, Associates and B.S.  
 F. Dietitian: B.S.  
 G. Environmental Health & Engineering: B.S.  
 H. Health Records: R.H.I.T. and R.H.I.A.  
 I. Medical Technology: B.S.  
 J. Medicine: Allopathic and Osteopathic.  
 K. Nurse: Associate and Bachelor Degrees and advanced degrees in Psychiatry, Geriatric, Women's Health, Pediatric Nursing, Nurse Anesthetist, and Nurse Practitioner.  
 \*(Priority consideration will be given to Registered Nurses employed by the IHS; in a program conducted under a contract or compact entered into under the Indian Self-Determination Act and Education Assistance Act (Pub. L. 93–638) and its amendments; or in a program assisted under Title V of the IHCA).

L. Occupational Therapy: B.S. or Masters.  
 M. Optometry: O.D.  
 N. Pharmacy: Pharm.D.  
 O. Physician Assistant: PAC.  
 P. Physical Therapy Assistant: Associate Degree.  
 Q. Physical Therapy: M.S. and D.P.T.  
 R. Podiatry: D.P.M.  
 S. Respiratory Therapy: BS Degree.  
 T. Social Work: Masters Level only (Direct Practice and Clinical concentrations).  
 U. Ultrasonography (Prerequisite: Diagnostic Radiology Technology).

## 2. Review and Selection Process

The applications will be reviewed and scored by the JHS Scholarship Program's Application Review Committee appointed by the IHS. Each reviewer will not be allowed to review an application from his/her area or his/her own Tribe. Each application will be reviewed by three reviewers. The

average score of the three reviews provides the final Ranking Score for each applicant. To determine the ranking of each applicant, these scores are sorted from the highest to the lowest within each scholarship, health discipline, date of graduation, and score. If several students have the same date of graduation and score within the same discipline, computer ranking list will randomly sort and will not be sorted by alphabetical name. Selections for recommendations to the Director, IHS, are then made from the top of each ranking list to the extent that funds allocated by the IHS among the three scholarships are available for obligation.

## VI. Award Administration Information

### 1. Award Notices

It is anticipated that applicants will be notified in writing during the first week of July 2009. An Award Letter will be issued to successful applicants. Unsuccessful applicants will be notified in writing, which will include a brief explanation of the reasons the application was not successful and provide the name of the IHS official to contact if more information is desired.

### 2. Administrative and National Policy Requirements

Regulations at 42 CFR 136.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of Indian Health Professions Preparatory and Pregraduate Scholarships and Indian Health Professions Scholarship. Section 104(b)(1) of the IHCA, as amended by the Indian Health Care Amendment of 1988, Public Law 100–713, authorizes the IHS to determine specific health professions for which Indian Health Scholarships will be awarded.

Awards for the Indian Health Professions Scholarships will be made in Accordance with 42 CFR 136.330.

Recipients shall incur a service obligation prescribed under section 338A of the Public Health Service Act (42 U.S.C. 2541) which shall be met by service:

- (1) In the IHS;
- (2) in a program conducted under a contract or compact entered into under the Indian Self-Determination Act and Education Assistance Act (Pub. L. 93–638) and its amendments;
- (3) in a program assisted under Title V of the Indian Health Care Improvement Act (Pub. L. 94–437) and its amendments; or
- (4) in a private practice option of his or her profession, if the practice (a) is situated in a health professional

shortage area, designated in regulations promulgated by the Secretary of Health and Human Services (Secretary) and (b) addresses the health care needs of a substantial number (51%) of Indians as determined by the Secretary in accordance with guidelines of the Service.

Pursuant to the Indian Health Amendments of 1992, (Pub. L. 102–573), a recipient of an Indian Health Professions Scholarship may, at the election of the recipient, meet his/her active duty service obligation prescribed under section 338A of the Public Health Service Act (42 U.S.C. 2541) by a program specified in options (1)(4) above that:

(i) Is located on the reservation of the Tribe in which the recipient is enrolled; or

(ii) Serves the Tribe in which the recipient is enrolled.

In summary, all recipients of the Indian Health Professions Scholarship are reminded that recipients of this scholarship incur a service obligation. Moreover, this obligation shall be served at a facility determined by the Director, IHS, consistent with IHCA, Public Law 94–437, as amended by Public Law 100–713, and Public Law 102–573.

### 3. Reporting

#### Scholarship Program Minimum Academic Requirements

It is the policy of the IHS that a scholarship recipient awarded under the Health Professions Scholarship Program of the Indian Health Care Improvement Act maintain a 2.0 cumulative grade point average (GPA) each semester/quarter and maintain full-time student status (minimum of 12 credit hours considered by your school as full-time). A recipient of a scholarship under the Health Professions Pre-Graduate and Health Professions Preparatory Scholarship authority must maintain good academic standing each semester/quarter and be a full-time student (minimum of 12 credit hours or the number of credit hours considered by your school as full time). In addition to the two requirements stated above, a Health Professions Scholarship program grantee must be enrolled in an approved/accredited school for a health professions degree. Part-time students for the three scholarship programs must also maintain a 2.0 cumulative GPA and must take at least six credit hours each semester/quarter but less than the number of hours considered full-time by your school. Scholarship grantees must be approved for part-time status at the time of scholarship award. Scholarship grantees may not change from part-time

status to full-time status or vice versa in the same academic year.

The following reports must be sent to the IHS Scholarship Program at the identified time frame. Each scholarship grantee will be provided with an IHS Scholarship Handbook where the needed reports are located. If a scholarship grantee fails to submit these reports as required, they will be ineligible for continuation of scholarship support and scholarship award payments will be discontinued.

A. Recipient's Enrollment and Initial Progress Report Within thirty (30) days from the beginning of each semester or quarter, scholarship grantees must submit a Recipient's Enrollment and Initial Progress Report (Form IHS-856-10, page 63 of the student handbook).

#### B. Transcripts

Within thirty (30) days from the end of each academic period, *i.e.*, semester, quarter, or summer session, scholarship grantees must submit an Official Transcript showing the results of the classes taken during that period.

#### C. Notification of Academic Problem/Change

If at any time during the semester/quarter, scholarship grantees are advised to reduce the number of credit hours for which they are enrolled below the minimum of the 12 (or the number of hours considered by their school as full time) for a full-time student or at least six hours for part-time students; or if they experience academic problems, they must submit this report (Form IHS 856-11, page 65 of the student handbook).

#### D. Change of Status

- Change of Academic Status  
Scholarship Grantees must immediately notify the IHS Area Scholarship Coordinator if they are placed on academic probation, dismissed from school, or voluntarily withdraw for any reason (personal or medical).

- Change of Health Discipline  
Scholarship Grantees may not change from the approved IHS Scholarship Program health discipline during the school year. If an unapproved change is made, scholarship payments will be discontinued.

- Change in Graduation Date  
Any time that a change occurs in a scholarship grantee's expected graduation date, they must notify their 1115 Area Scholarship Coordinator immediately in writing. Justification must be attached from the school advisor.

### VII. Agency Contacts

Please address application inquiries to the appropriate IHS Area Scholarship Coordinator. Other programmatic inquiries may be addressed to Dr. Dawn Kelly, Chief, Scholarship Program, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852; Telephone (301) 443-6622. (This is not a toll-free number). For grants information, contact the Grants Scholarship Coordinator, Division of Grants Operations, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852; Telephone (301) 443-0243. (This is not a toll-free number).

### VIII. Other Information

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Education and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2010, (Full Report; Stock No. 017-001-00474-0) or Healthy People 2010 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 [Telephone (202) 783-3238].

Interested individuals are reminded that the list of eligible health and allied professions is effective for applicants for the 2009-2010 academic year. These priorities will remain in effect until superseded. Applicants for health and allied health professions not on the above priority list will be considered pending the availability of funds and dependent upon the availability of qualified applicants in the priority areas.

Dated: February 19, 2009.

**Robert G. McSwain,**  
Director, Indian Health Service.

[FR Doc. E9-3941 Filed 2-24-09; 8:45 am]

BILLING CODE 4165-16-M

### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### National Institutes of Health

##### Clinical Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the NIH Advisory Board for Clinical Research.

The meeting will be open to the public as indicated below, with attendance limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended to discuss personnel matters, the disclosure of which would constitute a clearly unwarranted invasion of privacy.

*Name of Committee:* NIH Advisory Board for Clinical Research.

*Date:* March 30, 2009.

*Open:* 10 a.m. to 1:15 p.m.

*Agenda:* To review the Clinical Center Budget for fiscal year 2010.

*Place:* National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4-2551, Bethesda, MD 20892.

*Closed:* 1:15 p.m. to 2 p.m.

*Agenda:* To discuss personnel matters.

*Place:* National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4-2551, Bethesda, MD 20892.

*Contact Person:* Maureen E Gormley, Executive Secretary, Mark O. Hatfield Clinical Research Center, National Institutes of Health, Building 10, Room 6-2551, Bethesda, MD 20892, 301/496-2897.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: February 19, 2009.

**Jennifer Spaeth,**  
Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-4050 Filed 2-24-09; 8:45 am]

BILLING CODE 4140-01-P

### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### National Institutes of Health

##### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Cardiovascular Sciences Small Business Activities.

*Date:* March 5–6, 2009.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* InterContinental Chicago Hotel, 505 North Michigan Avenue, Chicago, IL 60611.

*Contact Person:* Lawrence E. Boerboom, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7814, Bethesda, MD 20892, (301) 435–8367, [boerboom@nih.gov](mailto:boerboom@nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Cell Biology Member Conflicts.

*Date:* March 9–10, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* David Balasundaram, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, [balasundaramd@csr.nih.gov](mailto:balasundaramd@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* AIDS and Related Research Integrated Review Group, Behavioral and Social Science Approaches to Preventing HIV/AIDS Study Section.

*Date:* March 12–13, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

*Contact Person:* Jose H. Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1137, [guerrierj@csr.nih.gov](mailto:guerrierj@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Small Business Hematology.

*Date:* March 13, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Delia Tang, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301–435–2506, [tangd@csr.nih.gov](mailto:tangd@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SBIR Special Emphasis Panel: Techniques in Stem Cell Biology, and Aging-Related Mechanisms and Devices.

*Date:* March 13, 2009.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Neelakanta Ravindranath, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7843, Bethesda, MD 20892, 301–435–1034, [ravindr@csr.nih.gov](mailto:ravindr@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 13, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–3713 Filed 2–24–09; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 3, 2009, 8 a.m. to March 4, 2009, 5 p.m., Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109 which was published in the **Federal Register** on February 10, 2009, 74 FR 6645–6647.

The meeting will be held March 3, 2009, 2 p.m. to March 4, 2009, 6 p.m. The meeting dates and location remain the same. The meeting is closed to the public.

Dated: February 13, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–3715 Filed 2–24–09; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, February 25, 2009, 8 a.m. to February 26, 2009, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on February 10, 2009, 74 FR 6645–6647.

The meeting has been changed to an AED meeting. The meeting date and time remain the same. The meeting is closed to the public.

Dated: February 18, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–3942 Filed 2–24–09; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel; Developmental mechanisms of human structural birth control.

*Date:* March 26, 2009.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Peter Zelazowski, PhD, Scientific Review Officer, Division of

Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Rm. 5B01, Bethesda, MD 20892–7510, 301–435–6902, [peter.zelazowski@nih.gov](mailto:peter.zelazowski@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 19, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–4047 Filed 2–24–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Program Project in Vascular Disease.

*Date:* March 17, 2009.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Shelley S Sehnert, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7924, 301–435–0303, [ssehnert@nhlbi.nih.gov](mailto:ssehnert@nhlbi.nih.gov).

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Mentored Scientist Awards (K99's).

*Date:* March 18, 2009.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Westin Arlington Gateway Hotel, 801 North Glebe Road, Arlington, VA 22203.

*Contact Person:* Holly K Krull, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–435–0280, [krullh@nhlbi.nih.gov](mailto:krullh@nhlbi.nih.gov).

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Research Projects in Weight Gain.

*Date:* March 20, 2009.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Keary A Cope, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, (301) 435–2222, [copeka@mail.nih.gov](mailto:copeka@mail.nih.gov).

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Program Project in Heart Failure.

*Date:* March 25, 2009.

*Time:* 10 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* William J Johnson, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, [johnsonwj@nhlbi.nih.gov](mailto:johnsonwj@nhlbi.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 19, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–4052 Filed 2–24–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel, Conference Grants with an Environmental Health Focus.

*Date:* March 30, 2009.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

*Contact Person:* Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute Environmental Health Sciences, P. O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307, [bass@niehs.nih.gov](mailto:bass@niehs.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 19, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–4046 Filed 2–24–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended, because the premature disclosure of these discussions would be likely to significantly frustrate implementation of recommendations.

*Name of Committee:* President's Cancer Panel.

*Date:* March 17, 2009.

Time: 1 p.m. to 3 p.m.

**Agenda:** Review and evaluate the final draft for the Environmental Factors in Cancer 2008/2009 Annual Report.

**Place:** National Cancer Institute, Office of the Director, National Institutes of Health, 6116 Executive Blvd., Suite 220, Bethesda, MD 20892 (Teleconference).

**Contact Person:** Abby Sandler, PhD., Executive Secretary, Chief, Institute Review Office, Office of the Director, National Cancer Institute, NIH, 6116 Executive Blvd., Suite 220, MSC 8349, Bethesda, MD 20892-8349, 301/451-9399, [sandlera@mail.nih.gov](mailto:sandlera@mail.nih.gov).

Any interested person may file written comments with the committee by forwarding the comments to the Contact Person listed on this notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://deainfo.nci.nih.gov/advisory/pcp/pcp.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 19, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-4048 Filed 2-24-09; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### **Prospective Grant of Co-Exclusive License: Use Fully Human and/or Humanized Monoclonal Antibodies Against IGF-I and/or IGF-II for the Treatment of Human Cancers**

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a co-exclusive patent license to practice the inventions embodied in U.S. Patent Application No. 12/296,328 entitled, "Human IGF-I-Specific and IGF-I and IGF-II Cross-Reactive Human Monoclonal Antibodies" and all foreign

counterparts [HHS Ref. No. E-336-2005/0] to Trubion Pharmaceuticals, Inc., which is located in Seattle, Washington. The patent rights in this invention have been assigned to the United States of America.

The prospective co-exclusive license territory may be worldwide and the field of use may be limited to the use of the antibodies and their method of use in the Licensed Patent Rights for the treatment of human cancers.

**DATES:** Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before April 27, 2009 will be considered. This notice updates the **Federal Register** Notice published in 73 FR 32719, June 10, 2008.

**ADDRESSES:** Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated co-exclusive license should be directed to: Whitney A. Hastings, M.S., Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852-3804. Telephone: (301) 451-7337; Facsimile: (301) 402-0220; E-mail: [hastingsw@mail.nih.gov](mailto:hastingsw@mail.nih.gov).

**SUPPLEMENTARY INFORMATION:** The type 1 insulin-like growth factor (IGF) receptor (IGF1R) is over-expressed by many tumors and mediates proliferation, motility, and protection from apoptosis. Agents that inhibit IGF1R expression or function can potentially block tumor growth and metastasis. Its major ligands, IGF-I and IGF-II, are over-expressed by multiple tumor types. Previous studies indicate that inhibition of IGF-I and/or IGF-II binding to its cognizant receptor negatively modulates signal transduction through the IGF pathway and concomitant cell growth. Therefore, use of humanized or fully human antibodies against IGFs represents a valid approach to inhibit tumor growth.

The above identified patent applications discloses three (3) novel fully human monoclonal antibodies designated m705, m706, and m708, which are specific for insulin-like growth factor (IGF)-I. Two (2) of the three (3) antibodies, m705 and m706 are specific for IGF-I and do not cross react with IGF-II and insulin while, m708 cross reacts with IGF-II.

These antibodies can be used to prevent binding of IGF-I to its concomitant receptor IGFIR, consequently, modulating diseases such as cancer. Additional embodiments describe methods for treating various human diseases associated with aberrant cell growth and motility

including breast, prostate, and leukemia carcinomas. Thus, these novel antibodies may provide a therapeutic intervention for multiple carcinomas without the negative side effects associated with insulin inhibition.

The prospective co-exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated co-exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 17, 2009.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. E9-4045 Filed 2-24-09; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### **Prospective Grant of Exclusive License: Diagnostic Tests for Predicting the Emergence of Suicidal Ideation Subsequent to Anti-Depressant Treatment**

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent Application 60/854,978 [HHS Ref. E-157-2006/0-US-01], PCT Patent Application PCT/US2007/082683 [HHS Ref. E-157-2006/1-PCT-01], U.S. Patent Application 11/925,334 [HHS Ref. E-157-2006/1-US-02], all entitled "Methods to Identify Patients at Risk of Developing Adverse Events During Treatment With Antidepressant Medication", and all continuing

applications and foreign counterparts, to NeuroMark, Inc., which has offices in Boulder, CO. The patent rights in these inventions have been assigned to and/or exclusively licensed to the Government of the United States of America.

The prospective exclusive license territory may be worldwide, licensees will need to address the medical usefulness of multi-gene test formats should data be developed to support such approaches and the term of the agreement may be commensurate with commercial incentives and public health needs. The field of use may be limited to:

FDA approved diagnostic test kits for predicting the emergence of suicidal ideation subsequent to anti-depressant treatment and for screening patients to identify those patients more likely to exhibit an increased risk of treatment-emergent suicidal ideation by assaying for the presence of a genotype in the patients which is associated with an increased risk of treatment-emergent suicidal ideation.

**DATES:** Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before April 27, 2009 will be considered.

**ADDRESSES:** Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Norbert Pontzer, Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852-3804; Telephone: (301) 435-5502; Facsimile: (301) 402-0220; E-mail: [pontzern@mail.nih.gov](mailto:pontzern@mail.nih.gov).

**SUPPLEMENTARY INFORMATION:** Suicidal ideation is an uncommon symptom than can emerge during antidepressant treatment. The Food and Drug Administration (FDA) requires a black box warning of worsening depression and/or emergence of suicidality (i.e., development of suicidal thoughts or behavior) for both adult and pediatric patients taking antidepressant medications. While use of antidepressants fell after to the black box warning, studies suggest that pediatric suicides may actually be rising. This has led to concerns that the black box warning led to a decrease in treatment and resulted in an overall increase in suicides. The Sequenced Treatment Alternatives for Depression (STAR\*D) trial at NIH found that versions of genes coding for components of the brain's chemical messenger system may be linked to suicidal thinking associated with antidepressant use. If links between genes and suicidal

thinking are validated under a license, depressed individuals at higher risk for suicide could benefit from closer monitoring, alternative treatments, or specialty care while allowing more aggressive treatment in individuals without the increased risk.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

February 18, 2009.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. E9-4053 Filed 2-24-09; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

#### Project: Strategic Prevention Framework State Incentive Grant (SPF SIG) Program (OMB No. 0930-0279) Revision

SAMHSA's Center for Substance Abuse Prevention (CSAP) is responsible for the evaluation instruments of the Strategic Prevention Framework State Incentive Grant (SPF SIG) Program. The program is a major national initiative designed to: (1) Prevent the onset and

reduce the progression of substance abuse, including childhood and underage drinking; (2) reduce substance abuse related problems in communities; and (3) build prevention capacity and infrastructure at the State/territory/tribe and community levels.

Five steps comprise the SPF:

Step 1: Profile population needs, resources, and readiness to address needs and gaps.

Step 2: Mobilize and/or build capacity to address needs.

Step 3: Develop a comprehensive strategic plan.

Step 4: Implement evidence-based prevention programs, policies, and practices.

Step 5: Monitor, evaluate, sustain, and improve or replace those that fail.

An evaluation team is currently implementing a multi-method, quasi-experimental evaluation of the first two SPF SIG cohorts receiving grants in FY 2004 and FY 2005. This notice invites comment on grantee-level, community-level, and participant-level data collection instruments designed for the cross-site evaluation of 16 Cohort 3 grantees receiving grants in FY 2006 and 20 Cohort 4 grantees. Since the ultimate goal is to fund all eligible jurisdictions, there are no control groups at the grantee level. The primary evaluation objective is to determine the impact of SPF SIG on the SAMHSA National Outcomes Measures (NOMs). Data collected at the grantee, community, and participant levels using the three instruments will be combined in an analysis that investigates the relationship, if any, between the SPF process and substance use outcomes at individual and community levels. The instruments will be included in an OMB review package submitted immediately after the expiration of the comment period and are the main focus of this announcement.

#### Grantee-Level Data Collection

Two instruments were developed for assessing grantee-level effects. Both instruments are guides for interviews that will be conducted by the grantees' evaluators twice over the life of the SPF SIG award. These instruments are modified versions of those used in the SPF SIG Cohort 1 and 2 Cross-Site Evaluation Study (OMB No. 09300279). The total burden of the original instruments has been reduced by deleting several questions and replacing the majority of open-ended questions with multiple-choice-response questions. The *Strategic Prevention Framework Implementation Interview Protocol* will be used to assess the relationship between SPF

implementation and change in the NOMs. The *Infrastructure Instrument* will capture data to assess infrastructure change and to test the relationship of this change to outcomes.

Prevention infrastructure refers to the organizational features of the system that delivers prevention services, including all procedures related to planning, data management systems, workforce development, intervention

implementation, evaluation and monitoring, financial management, and sustainability. The estimated annual burden for grantee-level data collection is outlined below:

#### GRANTEE LEVEL INSTRUMENT BURDEN ESTIMATE

Survey type	Content description	Respondent	Burden per respondent (hrs.)	Number of respondents	Number of responses per respondent	Total burden (hrs.)
<b>Grantee-Level Instrument (GLI)</b>						
Grantee SPF implementation.	SEW activities; SPF activities, including cultural competence through all 5 steps.	Grantee .....	3.5	36	2	252
Grantee Infrastructure .....	Grantee progress over time toward implementation of these best practices.	Grantee .....	1.25	36	2	90
Total burden .....	.....	.....	.....	.....	.....	342
Average annual burden over 4 Years.	.....	.....	.....	.....	.....	85.5

#### Community-Level Data Collection (Revision)

The Community-Level Instrument is a two part, web-based survey for capturing information about SPF SIG implementation at the subrecipient community level. The instrument is a modified version of the one in use in the SPF SIG Cohorts 1 and 2 Cross-Site Evaluation Study (OMB No. 09300279). The total burden of the original instrument was reduced by deleting several questions.

Part 1 of the instrument focuses on the five SPF SIG steps and efforts to ensure cultural competency throughout the SPF SIG process. Part 2 will capture data on the specific intervention(s)

implemented at the community level, including both individual-focused and environmental prevention strategies. Part 2 is a modular instrument that includes separate subforms for each of the eight different intervention types. This part will be completed for each intervention implemented during the reporting period, selecting only those subforms that apply to the interventions being reported. Community partners receiving SPF SIG awards will be required to complete the entire online survey once and enter updates every six months, using a secure password system. The estimated annual burden for community-level data collection is displayed in the next table. Note that the total burden assumes an average of

15 community-level subrecipients per grantee (a total of 540 respondents), an average of three distinct interventions implemented by each community, and two survey updates per year. Additionally, some questions will be addressed only once and the responses will be used to pre-fill subsequent updates. As community partners work through the SPF steps, they will report only on step-related activities. For example, needs assessment activities will likely precede monitoring and evaluation activities. Thus, respondents will answer questions related to needs assessment in the first few reports but will not need to address monitoring and evaluation items until later in the implementation process.

#### COMMUNITY LEVEL INSTRUMENT BURDEN ESTIMATE

Survey type	Content description	Respondent	Burden per respondent (hrs.)	Number of respondents	Number of responses per respondent	Total burden (hrs.)
<b>Community-Level Instrument (CLI)</b>						
<b>Reporting Period 1</b>						
Part I, 1–20 .....	Community Contact Information.	Grantee .....	1.5	36	1	54
Part I, 21–172 .....	Community SPF Activities Prevention Intervention Information.	Community ..	3.0	540	1	1,620
Part II, 1–33 .....		Community ..	.67	540	3	1,085.4
Part II, 34–138 .....	Intervention Type-Specific Information.	Community ..	.33	540	3	534.6

## COMMUNITY LEVEL INSTRUMENT BURDEN ESTIMATE—Continued

Survey type	Content description	Respondent	Burden per respondent (hrs.)	Number of respondents	Number of responses per respondent	Total burden (hrs.)
	.....	Community ..	.....	.....	.....	3,240
<b>CLI Part I Reporting Period 2–4 (Annual Updates)</b>						
Part I, 1–20 .....	Community Contact Information.	Grantee .....	.25	36	3	27
Part I, 21–172 .....	Community SPF Activities	Community ..	.75	540	3	1,215
<b>Community-Level Instrument (CLI) Burden</b>						
<b>CLI Part II Reporting Periods 2–8 (Bi-Annual Updates)</b>						
Part II, 1–33 .....	Prevention Intervention Information.	Community ..	.33	540	21	3,742.2
Part II, 34–138 .....	Intervention Type-Specific Information.	Community ..	.17	540	21	1,927.8
Total burden and cost: Period 2–8.	.....	Grantee .....	.....	.....	.....	27
	.....	Community ..	.....	.....	.....	6,885
Total burden and cost over 8 reporting periods.	.....	Grantee .....	.....	.....	.....	81
	.....	Community ..	.....	.....	.....	10,125
Average annual burden and cost over 4 years.	.....	Grantee .....	.....	.....	.....	20.3
	.....	Community ..	.....	.....	.....	2,531.3

**Participant-Level Data Collection (New Section)**

Participant-level data will be collected from all participants in direct service programs which last 30 days or more. Two instruments will be used for this purpose, one for participants aged 12–17 (youth instrument) and the other for participants aged 18 or older (adult instrument). The core sections of the two instruments will be the CSAP NOMs Adult and Youth Programs

Survey Forms (OMB No. 09300230). Local evaluators will have the option of selecting one or more additional survey items from a standard menu of validated questions not included in the NOMs Instruments, based on site-specific targeted program outcomes. These optional questions will be added to the NOMs Instruments to create site-specific instruments. No site-specific instrument created in this fashion will exceed an average completion time of 50 minutes.

The participant-level instruments will be administered to each participant at program entry, program exit, and six months after program exit. The following burden estimation is based on the assumption that each of the 540 community subrecipients will serve 50 participants per year in direct-service interventions lasting 30 days or more, amounting to 27,000 participants per year.

## PARTICIPANT LEVEL INSTRUMENT BURDEN ESTIMATE

Survey type	Content description	Respondent	Burden per respondent (hrs.)	Number of respondents	Number of responses per respondent	Total burden (hrs.)
<b>Participant-Level Instrument (PLI)</b>						
Baseline .....	.....	Participant ....	.83	27,000	4	89,640
Intervention completion .....	.....	Participant ....	.83	22,500	4	74,700
Follow-up .....	.....	Participant ....	.83	18,900	4	62,748
Total .....	.....	.....	2.5	68,400	.....	.....
Total burden over 4 Years.	.....	.....	.....	.....	.....	227,088
Average annual burden over 4 Years.	.....	.....	.....	.....	.....	56,772

**Overall SPF-SIG Data Collection**

Across the three instruments, it is estimated that the average number of annual respondents will be 36 grantee-level directors, 540 community-level

directors, and 68,400 intervention-level participants. The average annual hour burden will be 685.2 hours for the 36 grantee-level directors (19 hours per grantee director); 2,531.3 hours for the

540 community-level directors (4.69 hours per community director); and 56,772 hours for 68,400 intervention-level participants (0.83 hours per intervention participant).

**ALL THREE INSTRUMENT BURDEN ESTIMATE**

Survey type	Respondent	Burden per respondent (hrs.)	Number of respondents	Total burden (hrs.)
GLI .....	Grantee .....	19.00	36	685.2
CLI .....	Community .....	4.69	540	2531.3
PLI .....	Participant .....	.83	68,400	56,772
Average Annual burden .....	.....	.....	68,976	59,988.5
Total burden over 4 Years .....	.....	.....	275,904	239,954

Written comments and recommendations concerning the proposed information collection should be sent by March 27, 2009 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202-395-6974.

Dated: February 19, 2009.

**Elaine Parry,**

*Acting Director, Office of Program Services.*  
[FR Doc. E9-4012 Filed 2-24-09; 8:45 am]

**BILLING CODE 4162-20-P**

**DEPARTMENT OF HOMELAND SECURITY****U.S. Citizenship and Immigration Services****Agency Information Collection Activities: Form I-829, Extension of a Currently Approved Information Collection; Comment Request**

**ACTION:** 30-Day Notice of Information Collection Under Review: Form I-829, Petition by Entrepreneur to Remove Conditions; OMB Control No. 1615-0045.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 15, 2008, at 73 FR 76038, allowing for a 60-day public

comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 27, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529-2210. Comments may also be submitted to DHS via facsimile to 202-272-8352 or via e-mail at [rfs.regs@dhs.gov](mailto:rfs.regs@dhs.gov), and to the OMB USCIS Desk Officer via facsimile at 202-395-6974 or via e-mail at [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

When submitting comments by e-mail please make sure to add OMB Control Number 1615-0045 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Petition by Entrepreneur to Remove Conditions.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-829. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and households. This form is used by a conditional resident alien entrepreneur who obtained such status through a qualifying investment, to apply to remove conditions on his or her conditional residence, and on the conditional residence for his or her spouse and children(s).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200 responses at 2 hours and 5 minutes (2.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 416 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: <http://www.regulations.gov/search/index.jsp>.

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529–2210, (202) 272–8377.

Dated: February 20, 2009.

**Kathryn Catania,**

*Management and Program Analyst,  
Regulatory Management Division, U.S.  
Citizenship and Immigration Services.*

[FR Doc. E9–4011 Filed 3–3–09; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5288–N–01]

### Notice of Proposed Information Collection for Public Comment; Disaster Housing Assistance Program-Ike (DHAP-Ike)

**AGENCY:** Office of Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* April 27, 2009.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and should be sent to: Lillian L. Deitzer, Department Reports Management Officer, ODAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000; telephone: 202–708–2374, (this is not a toll-free number) or e-mail Ms. Deitzer at [Lillian\\_L\\_Deitzer@HUD.gov](mailto:Lillian_L_Deitzer@HUD.gov) for a copy of the proposed form and other available information.

**FOR FURTHER INFORMATION CONTACT:** Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: 202–708–0713 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of

the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Disaster Housing Assistance Program-Ike (DHAP-Ike).

*OMB Control Number:* 2577–0258.

*Description of Information Collection:* This document provides notice that HUD and the Federal Emergency Management Agency (FEMA) have executed an Interagency Agreement (IAA) establishing a grant program called the Disaster Housing Assistance Program-Ike (DHAP-Ike), and that the operating requirements for the DHAP-Ike have been issued through HUD Notice. DHAP-Ike is a joint initiative undertaken by HUD and FEMA to provide monthly rent subsidies and case management services for individuals and families displaced by Hurricane Ike and/or Hurricane Gustav who were not receiving housing assistance from HUD.

*Agency form number, if applicable:* HUD–5251; HUD–5256.

*Members of affected public:* State, Local or Tribal Government.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents:* The estimated total number of burden hours needed to prepare the information collection is 1,838,520; the number of respondents is 120; the frequency of response for each form varies from quarterly and annually.

*Status of the proposed information collection:* Extension of a Currently Approved Collection.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 18, 2009.

**Bessy Kong,**

*Deputy Assistant Secretary, Policy, Program and Legislative Initiatives.*

[FR Doc. E9–3955 Filed 2–24–09; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–14]

### Housing Counseling Program

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Information allows HUD to contract with organizations that provide tenant and homeowner counseling. Counseling aids tenants and homeowners in improving their housing conditions and in meeting the responsibilities of tenancy and homeownership. HUD-approved agencies can compete for program funds.

**DATES:** *Comments Due Date:* March 27, 2009.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0261) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

#### FOR FURTHER INFORMATION CONTACT:

Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at [Lillian\\_L\\_Deitzer@HUD.gov](mailto:Lillian_L_Deitzer@HUD.gov) or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to

be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

### This Notice Also Lists the Following Information

*Title of Proposal:* Housing Counseling Program.

*OMB Approval Number:* 2502-0261.  
*Form Numbers:* HUD-9900, HUD-424-CB, HUD-424-CBW, HUD-27300, HUD-2880, HUD-2990, HUD-2991, HUD-96010, HUD-9902, HUD-9908, HUD-9910.

*Description of the Need for the Information and its Proposed Use:*

Information allows HUD to contract with organizations that provide tenant and homeowner counseling. Counseling aids tenants and homeowners in improving their housing conditions and in meeting the responsibilities of tenancy and homeownership. HUD-approved agencies can compete for program funds.

*Frequency of Submission:* On occasion, quarterly, monthly, annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden .....	12,450	3.21		0.908		36,320

*Total Estimated Burden Hours:* 36,320.

*Status:* Revision of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 18, 2009.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act  
Officer, Office of the Chief Information  
Officer.*

[FR Doc. E9-3954 Filed 2-24-09; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R1-R-2009-N00006; 1265-0000-10137-S3]

#### Hakalau Forest National Wildlife Refuge, Hawai'i, HI

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to prepare a comprehensive conservation plan and environmental assessment; announcement of public open house meetings; and request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service, we) intend to prepare a comprehensive conservation plan (CCP) for the Hakalau Forest National Wildlife Refuge (Refuge), including the Hakalau Forest and the Kona Forest Units. We will also prepare an environmental assessment (EA) to evaluate the effects of various CCP alternatives. This notice also announces public open house meetings; see **SUPPLEMENTARY INFORMATION** for the details. We furnish this notice in compliance with our CCP policy to advise other agencies and the public of our intentions, and to obtain comments

and information on the scope of issues to be considered in the planning process.

**DATES:** Please provide written comments by March 27, 2009. We will hold public open house meetings on March 3 and 4, 2009, to begin the CCP planning process; see **SUPPLEMENTARY INFORMATION** for dates, times, and locations.

**ADDRESSES:** Address comments, questions, and requests for further information to Jim Kraus, Refuge Manager, Hakalau Forest National Wildlife Refuge, 60 Nowelo Street, Suite 100; Hilo, HI 96720. Comments may be faxed to the Refuge at (808) 443-2304, or e-mailed to [FW1PlanningComments@fws.gov](mailto:FW1PlanningComments@fws.gov). Include "Hakalau Forest Refuge CCP" in the subject line of the message. Additional information concerning the Refuge is available on the Internet at <http://www.fws.gov/hakalauforest/>.

**FOR FURTHER INFORMATION CONTACT:** Jim Kraus, Refuge Manager, (808) 443-2300.  
**SUPPLEMENTARY INFORMATION:** With this notice, we initiate the CCP process for the Hakalau Forest Refuge.

### Background

The National Wildlife Refuge System Administration Act of 1966 (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee), requires us to develop a CCP for each national wildlife refuge. The purpose of developing a CCP is to provide a refuge manager a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining management direction for conserving wildlife and

their habitats, CCPs identify wildlife-dependent recreation opportunities, including opportunities for wildlife observation, wildlife photography, and environmental education and interpretation.

The Service will prepare an EA to evaluate the environmental effects of CCP alternatives, in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500-1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Each unit of the NWRS is established for specific purposes. We use these purposes to develop and prioritize management goals and objectives within the NWRS mission, and to guide refuge public uses. The planning process provides opportunities for the public to participate in evaluating our management goals and objectives for conserving important wildlife and its habitat, while providing wildlife-dependent recreation opportunities that are compatible with a refuge's establishing purpose(s) and the mission of the NWRS.

### Public Involvement

We will conduct a planning process that will provide opportunities for the public; State and local governments; agencies; Native Hawaiian organizations; and other interest groups to participate. We request input for issues, concerns, ideas, and suggestions for the future management of the Refuge. We will also give the public an opportunity to provide input at open houses to scope issues and concerns. All information provided voluntarily by mail, phone, or at public meetings becomes part of our official public record. We will handle requests for comments received in accordance with the Freedom of Information Act, NEPA,

and Service and Departmental policies and procedures.

### Refuge Overview

Both the Hakalau Forest and Kona Forest Units are part of the Hakalau Forest Refuge. The Hakalau Forest Unit was established in 1985 to protect and manage endangered forest birds and their rain forest habitat. Located on the west slope of Mauna Kea Mountain on Island of Hawai'i, the 32,733-acre refuge unit supports a diversity of native birds and plants. The Kona Forest Unit was established in 1997 to protect native forest birds and the endangered Hawaiian crow (alala). Located on the west slope of Mauna Loa, the 5,300-acre refuge unit supports diverse native bird and plant species as well as the rare habitats found in lava tubes and lava tube skylights.

### Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities that we may address in the CCP. During public scoping, we may identify additional issues. During the CCP planning process the Service will analyze methods for protecting refuge resources in the long term, while providing opportunities for wildlife-dependent recreation.

The Service will specifically evaluate the Refuge's forest restoration program, which encompasses volunteer efforts, control of avian diseases and invasive species (both plant and animal), endangered plant propagation, and outplanting. We will also consider possible improvements to our public use programs and an evaluation of its impacts to wildlife, and opportunities for native gathering rights.

### Public Open House Meetings

We will host two public open house meetings to provide information on the CCP and receive public comments. The first meeting will be held March 3, 2009, from 6:30 p.m. to 8:30 p.m., at the Hakalau Forest Refuge Office at 60 Nowelo Street, Room M02, Hilo, HI 96720. The second meeting will be held March 4, 2009, from 6:30 p.m. to 8:30 p.m., at Yano Hall at 82-6156 Mamalahoa Highway, Captain Cook, HI 96745. Opportunities for additional public input will be announced throughout the planning process.

### Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your

personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will make all comments part of the official public record. We will handle requests for such comments in accordance with the Freedom of Information Act, NEPA, and Service and Departmental policies and procedures.

Dated: February 20, 2009.

**Robyn Thorson,**

*Regional Director, Region 1, Portland, Oregon.*

[FR Doc. E9-4093 Filed 2-24-09; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LL WO31000-L13100000.PP0000-09-24-1A; OMB Control Number 1004-0162]

### Information Collection; Oil and Gas Geophysical Exploration Operations

**AGENCY:** Bureau of Land Management.

**ACTION:** 30-Day notice and request for comments.

**SUMMARY:** The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year extension of OMB Control Number 1004-0162 under the Paperwork Reduction Act. The respondents are required to provide certain information in order to conduct oil and gas geophysical exploration operations on lands managed by BLM or by the U.S. Forest Service.

**DATES:** The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before March 27, 2009.

**ADDRESSES:** You may submit comments directly to the Desk Officer for the Department of the Interior (OMB # 1004-0162), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202-395-6566, or by electronic mail at [oir\\_docket@omb.eop.gov](mailto:oir_docket@omb.eop.gov).

Please mail or hand-carry a copy of your comments to: BLM Information Collection Clearance Officer (WO-630), Department of the Interior, 1849 C Street, NW., Mail Stop 401 LS, Washington, DC 20240.

You may also send a copy of your comments by electronic mail to [jean\\_sonneman@blm.gov](mailto:jean_sonneman@blm.gov).

### FOR FURTHER INFORMATION CONTACT:

Barbara Gamble, Division of Fluid Minerals, at 202-452-0338 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:** *60-Day Notice:* On September 9, 2008, the BLM published a 60-day notice (73 FR 52409) requesting comments on the proposed information collection. The comment period ended November 10, 2008. One comment was received. The comment did not address, and was not germane to, this information collection; rather, it was a general invective about the Department of the Interior, the BLM, the oil and gas industry, and Washington politicians. Therefore, we have no response to the comment.

*Title:* Oil and Gas Geophysical Exploration Operations (43 CFR part 3150).

*OMB Number:* 1004-0162.

*Form Numbers:* BLM 3150-4/FS 2800-16; BLM 3150-5/FS 2800-16a.

*Abstract:* The information that is supplied allows the BLM and the U.S. Forest Service to determine that geophysical exploration operations are conducted in a manner consistent with statutes, regulations, land use plans, and environmental documents prepared under the National Environmental Policy Act.

*Current Action:* This proposal is being submitted to extend the expiration date of February 28, 2009.

*Type of Review:* 3-year extension.

*Affected Public:* Business or other for-profit institutions.

*Obligation to Respond:* Required to obtain or retain benefits.

*Estimated Number of Annual Responses:* 1,253.

*Estimated Time per Response:* BLM 3150-4/FS 2800-16, 1 hour; BLM 3150-5/FS 2800-16a, 20 minutes; Nonform data, 1 hour.

*Estimated Total Annual Burden Hours:* 836.

The BLM requests comments on the following subjects: (1) Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility; (2) The accuracy of the BLM's estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (3) The quality, utility, and clarity of the information collected; and (4) How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Dated: February 20, 2009.

**Jean Sonneman,**

*Bureau of Land Management, Acting  
Information Collection Clearance Officer.*

[FR Doc. E9-4056 Filed 2-24-09; 8:45 am]

BILLING CODE 4310-84-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLIDT000000.L11200000.DD0000.241A.00]

#### Notice of Public Meeting: Joint Meeting of the Boise and Twin Falls Resource Advisory Councils to the Boise and Twin Falls Districts, Bureau of Land Management, U.S. Department of the Interior

**AGENCY:** Bureau of Land Management, U.S. Department of the Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise and Twin Falls District Resource Advisory Councils will hold a meeting as indicated below.

**DATES:** The meeting will be held April 9, 2009, beginning at 10 a.m. and adjourning at 2 p.m. The meeting will be held at the Snake River Grill meeting room in Hagerman, Idaho, at 611 Frogs Landing. Public comment period will take place from 10:15-10:45 a.m.

**FOR FURTHER INFORMATION CONTACT:** MJ Byrne, Public Affairs Officer and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384-3393, or Heather Tiel-Nelson, Public Affairs Officer and RAC Coordinator for BLM Twin Falls District, 2536 Kimberly Rd., Twin Falls, ID 83301, (208) 736-2352.

**SUPPLEMENTARY INFORMATION:** In accordance with section 4 of the Federal Lands Recreation Enhancement Act of 2005, a Subcommittee, called a Recreation Resource Advisory Committee, (RRAC) has been established to provide advice to the Secretary of the Interior, through the BLM, in the form of recommendations that relate to public concerns regarding the implementation, elimination or expansion of an amenity recreation fee; or recreation fee program on public lands under the jurisdiction of the U.S. Forest Service and the BLM in both the Boise and Twin Falls Districts located in southern Idaho.

The RRAC met on February 5 to hear proposals from both the Boise and

Sawtooth National Forests regarding fee increases or new fee site implementations on various sites. Recommendations formed by the RRAC during the February meeting will be brought before both Boise and Twin Falls District RACs during the meeting on April 9. These recommendations include implementing new fees for the Campbell Creek Boat Launch managed by the Boise National Forest and new fee site implementation or fee increases for several sites managed by the Sawtooth National Forest. Those sites include the following: Baumgartner group site (new group use fee proposal) Abbott, Bird Creek, Willow Creek, Chaparral, Bowns and Canyon campgrounds (fee increases), Schipper and Steer Basin campgrounds (new fee site implementation), Diamondfield Jack campground (fee increase), and the Redfish Lake and Sawtooth Valley cabins (new fee site implementation). Agenda items and location may change due to changing circumstances, including emergencies. All RRAC and RAC meetings are open to the public. Each Subcommittee and full Joint RAC meeting has time allocated in the agenda for hearing public comments. The public may present written or oral comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM Coordinators as provided above.

Dated: February 20, 2009.

**Bill Baker,**

*Twin Falls District Manager.*

[FR Doc. E9-4004 Filed 2-24-09; 8:45 am]

BILLING CODE 4310-GG-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLNV912000.L12200000.PA0000. 9-08807; TAS: 14X1109]

#### Meeting Schedule for the Sierra Front-Northwestern Great Basin Resource Advisory Council, Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meetings.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin

Resource Advisory Council (RAC), Nevada, will hold two meetings in Nevada in 2009. All meetings are open to the public. A general public comment period, where the public may submit oral or written comments to the RAC, will be held on the first day of each two-day meeting at 4 p.m.

**DATES:** April 29-30, 2009, in Winnemucca and July 22-23, 2009, in Carson City.

#### FOR FURTHER INFORMATION CONTACT:

Mark Struble, Public Affairs Officer, BLM Carson City District Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone: (775) 885-6107. E-mail: [mark\\_struble@blm.gov](mailto:mark_struble@blm.gov).

**SUPPLEMENTARY INFORMATION:** The April meeting will be held at the BLM Winnemucca District Office, 5100 East Winnemucca Blvd. The July meeting will be held at the BLM Carson City District Office, 5665 Morgan Mill Road.

Topics for discussion at the meetings will include, but are not limited to, manager's reports of BLM district activities; RAC subcommittee or working group reports; Burning Man event monitoring; Southern Nevada Public Land Management Act Round 10 nominations; Winnemucca District Resource Management Plan Draft Environmental Impact Statement; renewable energy projects; Truckee River restoration efforts; and additional topics the council may raise during the meetings. Final agendas, with any additions or corrections to agenda topics, the starting and ending times of each meeting, and details of any planned field trips, will be posted at least two weeks before each meeting on the BLM Nevada State Office Web site at [http://www.blm.gov/nv/st/en/res/resource\\_advisory/sierra\\_front-northwestern.html](http://www.blm.gov/nv/st/en/res/resource_advisory/sierra_front-northwestern.html). On request, copies of the agendas can also be mailed or sent via FAX. Individuals needing special assistance such as sign language interpretation or other reasonable accommodations, or those who wish to receive a copy of the agenda, may contact Mark Struble no later than two weeks before the meeting.

Dated: February 17, 2009.

**Gene Seidlitz,**

*Manager, Winnemucca District Office.*

[FR Doc. E9-4002 Filed 2-24-09; 8:45 am]

BILLING CODE 4310-HC-P

**DEPARTMENT OF THE INTERIOR****National Park Service****Final Environmental Impact Statement/General Management Plan; San Juan Island National Historical Park, San Juan County, WA; Notice of Approval of Record of Decision**

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR Part 1505.2), the Department of the Interior, National Park Service has prepared and approved a Record of Decision for the *Final Environmental Impact Statement* for the updated General Management Plan (GMP), San Juan Island National Historical Park. The current GMP was completed in 1979; many conditions on San Juan Island and within the park have changed, particularly in the last 15–20 years. The requisite no-action “wait period” was initiated October 31, 2008, with the Environmental Protection Agency’s **Federal Register** notification of the filing of the Final EIS.

**Decision:** As soon as practical San Juan Island National Historical Park will begin to implement park operations, resource management, interpretive programs, and land acquisitions (willing seller) presented and analyzed as the *Preferred Alternative* in the Final EIS (and which includes no substantive changes from the course of action as presented in the Draft EIS). The full range of foreseeable environmental consequences was assessed, and appropriate mitigation measures are included in the approved plan; this course of action was deemed to be the “environmentally preferred” alternative. The Final EIS identified and analyzed two additional alternatives, and corresponding mitigation strategies, which were responsive to concerns and issues the public voiced during the extensive scoping process and Draft EIS review, and to NPS conservation planning requirements.

Alternative C is the selected plan. Identified as the agency-preferred alternative in the EIS, this updated GMP broadens the scope of resource management and interpretation programs to emphasize the connections and interrelationships between the park’s cultural and natural resources. Historic buildings and structures will continue to be preserved, with some additional buildings open to the public for interpretation. New facilities, trails and programs will provide opportunities for visitors to understand

how the park’s natural surroundings influenced the settlement and historic events on San Juan Island and help define the cultural landscapes preserved within the park. The new plan also proposes boundary adjustments at both English Camp and American Camp, which includes acquisition of land from the Washington State Department of Natural Resources (DNR), Bureau of Land Management (BLM), and one private parcel under a willing-seller condition only.

**Copies:** Interested parties desiring to review the Record of Decision may obtain a copy by contacting the Superintendent, San Juan Island National Historical Park, Box 429, Friday Harbor, WA 98250 or via telephone request at (360) 378–2240.

Dated: January 30, 2009.

**Cicely A. Muldoon,**

*Acting Regional Director, Pacific West Region.*

[FR Doc. E9–3990 Filed 2–24–09; 8:45 am]

**BILLING CODE 4310–70–P**

**DEPARTMENT OF THE INTERIOR****Bureau of Reclamation****Agency Information Collection; Activities Under OMB Review; Comment Request**

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of renewal of a currently approved collection (OMB No. 1006–0014).

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Reclamation (Reclamation) has forwarded the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: Lower Colorado River Well Inventory, OMB Control Number: 1006–0014.

**DATES:** Comments on this notice must be received by *March 27, 2009*.

**ADDRESSES:** You may send written comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile to (202) 395–6566, or e-mail to [OIRA\\_DOCKET@omb.eop.gov](mailto:OIRA_DOCKET@omb.eop.gov). A copy of your comments should also be directed to the Bureau of Reclamation, Attention: BCOO–4200, P.O. Box 61470, Boulder City, NV 89006.

**FOR FURTHER INFORMATION CONTACT:** Ruth Thayer, Group Manager, Boulder Canyon Operations Office, Bureau of Reclamation, 702–293–8426.

**SUPPLEMENTARY INFORMATION:** *Title:* Lower Colorado River Well Inventory.

**OMB No.:** OMB No. 1006–0014.

**Abstract:** Pursuant to the Boulder Canyon Project Act (Pub. L. 70–642, 45 Stat. 1057), all diversions of mainstream Colorado River water must be in accordance with a Colorado River water entitlement. The Consolidated Decree of the United States Supreme Court in *Arizona v. California*, 547 U.S. 150 (2006) requires the Secretary of the Interior to account for all diversions of mainstream Colorado River water along the lower Colorado River, including water drawn from the mainstream by underground pumping. To meet the water entitlement and accounting obligations, an inventory of wells and river pumps is required along the lower Colorado River, and the gathering of specific information concerning these wells and river pumps.

**Description of respondents:** The respondents will include well and river-pump owners and operators along the lower Colorado River in Arizona, California, and Nevada. Each well and river pump owner or operator must be identified, as well as the location of their diversion and type of water use determined.

**Frequency:** These data are collected only once for each well or river-pump owner or operator as long as changes in water use, or other changes that would impact contractual or administrative requirements, are not made. A respondent may request that the data for their well or river pump be updated after the initial inventory.

**Estimated completion time:** An average of 20 minutes is required to interview individual well and river-pump owners or operators. Reclamation will use the information collected during these interviews to complete the information collection form.

**Annual responses:** 1,500.

**Annual burden hours:** 500 hours.

**Comments:**

Reclamation invites your comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to

respond to a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the Lower Colorado River Well Inventory, OMB Control Number: 1006-0014.

A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** (73 FR 74749, December 9, 2008). No public comments were received. This notice is a final opportunity to comment on the collection of information as requested in items (a)–(d) listed above.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment (including your personal identifying information) may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 13, 2009.

**Steven C. Hvinden,**

*Area Manager, Boulder Canyon Operations Office, Lower Colorado Region, Bureau of Reclamation.*

[FR Doc. E9-4007 Filed 2-24-09; 8:45 am]

**BILLING CODE 4310-MN-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### Notice of Proposed Information Collection for 1029-0025

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information for 30 CFR Part 733—Maintenance of State Programs and Procedures for Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs.

**DATES:** Comments on the proposed information collection activity must be received by April 27, 2009, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202—SIB, Washington, DC 20240. Comments may also be submitted electronically to [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection request contact John Trelease, at (202) 208-2783 or via e-mail at the address listed above.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR Part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collection that OSM will be submitting to OMB for approval. This collection is contained in 30 CFR Part 733—Maintenance of State Programs and Procedures for Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs. OSM will request a 3-year term of approval for each information collection activity. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Comments are invited on:* (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

*Title:* 30 CFR Part 733—Maintenance of State Programs and Procedures for

Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs.

*OMB Control Number:* 1029-0025.

**SUMMARY:** This part provides that any interested person may request the Director of OSM to evaluate a State program by setting forth in the request a concise statement of facts that the person believes establishes the need for the evaluation.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* Any interested person (individuals, businesses, institutions, organizations).

*Total Annual Responses:* 1.

*Total Annual Burden Hours:* 25.

Dated: February 19, 2009.

**Alfred E. Whitehouse,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. E9-3890 Filed 2-24-09; 8:45 am]

**BILLING CODE 4310-05-M**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1143 (Final)]

### Small Diameter Graphite Electrodes From China

#### Determination

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of small diameter graphite electrodes, provided for in subheading 8545.11.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).<sup>2</sup>

#### Background

The Commission instituted this investigation effective January 17, 2008, following receipt of a petition filed with the Commission and Commerce by SGL Carbon LLC, Charlotte, NC, and Superior Graphite Co., Chicago, IL. The final phase of the investigation was scheduled by the Commission following notification of a preliminary

<sup>1</sup> The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> The Commission also finds that imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on China.

determination by Commerce that imports of small diameter graphite electrodes from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 4, 2008 (73 FR 51647). The hearing was held in Washington, DC, on January 6, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 19, 2009. The views of the Commission are contained in USITC Publication 4062 (February 2009), entitled *Small Diameter Graphite Electrodes from China: Investigation No. 731-TA-1143 (Final)*.

Issued: February 19, 2009.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9-3963 Filed 2-24-09; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on February 19, 2009, a proposed Sixth Amendment to the Consent Decree entered in *United States v. BP Exploration and Oil Co., et al.*, (Civil No. 2:96 CV 095 RL), was lodged with the United States District Court for the Northern District of Indiana.

This settlement relates to BP Products North America Inc.'s ("BP Products") petroleum refinery located in Texas City, Texas (the "Texas City Refinery").

The United States alleges civil claims under the Clean Air Act ("CAA") against BP Products for violations at the Texas City Refinery of the National Emission Standard for Hazardous Air Pollutants for Benzene Waste Operations, 40 CFR Part 61, subpart FF; the Recycling and Emissions Reduction Regulations for Refrigerants, 40 CFR Part 82, subpart F, part of the Act's stratospheric ozone protection program; and the National Emission Standard for Hazardous Air Pollutants for Asbestos, 40 CFR Part 61, subpart M. The United States also alleges that BP Products

violated, at the Texas City Refinery, provisions of the original civil Consent Decree entered in the above-referenced matter that incorporated requirements of 40 CFR part 61, subpart FF. The United States' CAA claims are stated in the supplemental counts of the Supplemental Third Amended Complaint also filed on February 19, 2009 in the above-referenced matter.

Under the proposed Sixth Amendment to the Consent Decree, BP Products will perform injunctive relief to: (1) Eliminate or minimize emissions of benzene at the Texas City Refinery; (2) eliminate or minimize the emission of Ozone Depleting Substances ("ODS") from regulated cooling appliances at the Texas City Refinery; and (3) ensure that Asbestos-Containing Materials ("ACM") at the Texas City Facility are identified, managed, handled, and disposed of properly so as to minimize the emission of asbestos.

Under the proposed Sixth Amendment to the Consent Decree, BP Products will also pay a civil penalty to the United States in the amount of \$12 million and perform a \$6-million Supplemental Environmental Project ("SEP") to convert heavy-duty diesel and other gasoline-powered vehicles owned and/or operated by the City of Texas City, Texas and the Texas City Independent School District so as to operate on compressed natural gas ("CNG") or liquified natural gas ("LNG").

The Department of Justice will receive comments relating to the Sixth Amendment to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. BP Exploration & Oil Co., et al.*, D.J. Ref. 90-5-2-1-07109.

The Sixth Amendment to the Consent Decree may be examined at the Office of the United States Attorney, Northern District of Indiana, 5400 Federal Plaza, Suite 1500, Hammond, IN 46320, and at U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. During the public comment period, the Sixth Amendment to the Consent Decree may also be examined on the following Department of Justice Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the Sixth Amendment to the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O.

Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy by mail, from the Consent Decree Library, please enclose a check in the amount of \$32.75 (25 cents per page reproduction cost) for the Sixth Amendment to the Consent Decree payable to the U.S. Treasury.

**Maureen M. Katz,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E9-3995 Filed 2-24-09; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

[OMB Number 1121-0243]

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: Grants Management System Online Application.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until April 27, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Amy Callaghan, (202) 514-9292, Office of Justice Programs, Department of Justice, 810 Seventh Street, NW., Washington, DC 20531 or [Amy.Callaghan@usdoj.gov](mailto:Amy.Callaghan@usdoj.gov).

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* Grants Management System Online Application.

(3) *The Agency Form Number, if any, and the Applicable Component of the Department Sponsoring the Collection:* There is no form number, Office of Justice Programs, United States Department of Justice.

(4) *Affected Public Who Will be Asked or Required to Respond, as well as a Brief Abstract:* The primary respondents are State, Local or Tribal Governments applying for grants. GMS is used to implement the statutory requirements of the Grant Management System (GMS) Online Application; Grant Adjustment Notice (GAN); Progress and Financial Reports of applications, awards, and closeouts.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* An estimated 34,097 grantees will respond to Grants Management System Online Application and on average it will take each of them 12 hours to complete the 4 applications.

(6) *An Estimate of the Total Public Burden (in hours) Associated with the collection:* The estimated public burden associated with this application is 137,238 hours.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 19, 2009.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E9-3988 Filed 2-24-09; 8:45 am]

**BILLING CODE 4410-18-P**

#### DEPARTMENT OF LABOR

##### Employee Benefits Security Administration

##### Prohibited Transaction Exemptions and Grant of Individual Exemptions involving: D-11428, Heico Holding Inc. Pension Plan (the Plan), 2009-04; D-11450, Brewster Dairy, Inc. 401(k) Profit Sharing Plan (the Plan)

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

#### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

##### Heico Holding Inc. Pension Plan (the Plan), Located in Downers Grove, IL

[Prohibited Transaction Exemption 2009-04; Exemption Application Number: D-11428]

##### Exemption

The restrictions of section 406(a)(1)(A) and (D), and section 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply to the sale by the Plan of a non-marketable limited partnership interest (the Interest) in Trident Equity Fund, II, L.P. (the Partnership) to Heico Holding Inc. (the Applicant), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The sale is a one-time transaction for cash;

(b) The Plan pays no commissions, fees or other expenses in connection with the sale;

(c) The terms and conditions of the sale are at least as favorable as those obtainable in an arm's length transaction with an unrelated third party;

(d) As a result of the sale, the Plan receives the greater of: (i) \$1,050,000; (ii) The value of the Interest as determined by the General Partner of the Partnership and reported on the most recent quarterly account statements of the Partnership available at the time of the sale; (iii) The fair market value of the Interest as determined on the date of the sale by a qualified, independent appraiser; or (iv) The total amount of the Plan's contributions to the Partnership made on or after January 21, 2005 (i.e., the Plan's investment cost basis in the Interest); and

(e) Upon Plan termination, it is determined that the Plan is overfunded.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of

Proposed Exemption published on November 20, 2008 at 73 FR 70372.

*For Further Information Contact:* Mr. Mark Judge of the Department, telephone (202) 693-8339. (This is not a toll-free number.)

**Brewster Dairy, Inc. 401(k) Profit Sharing Plan (the Plan), Located in Brewster, OH**

[Prohibited Transaction Exemption 2009-05; Exemption Application No. D-11450]

**Exemption**

The restrictions of sections 406(a)(1)(A) and (D), 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A), (D) and (E) of the Code, shall not apply to the November 18, 2008 sale (the Sale) by the Plan of 2.5 limited partnership units (the Units) in the Heartland California Clayton Limited Partnership (the Partnership) to Brewster Dairy, Inc. (Brewster), the Plan's sponsor and a party in interest with respect to the Plan, for the greater of: (1) \$57,000; (2) the net proceeds for the Units in the event the Partnership sells its real estate (the Property) to a third party; or (3) the net proceeds from foreclosure for the Units in the event the Property is foreclosed to pay back real estate taxes, provided the following conditions are satisfied:

(a) The Sale of the Units was a one-time transaction for cash;

(b) The Plan paid no commissions, fees or other expenses in connection with the Sale;

(c) The terms of the transaction were at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party;

(d) The fair market value of the Units on the date of the Sale was determined by a qualified independent appraiser;

(e) The Plan fiduciaries determined whether it was in the best interest of the Plan to go forward with the Sale, reviewed and approved the methodology used in the appraisal that was relied upon, and ensured that the methodology was applied by a qualified, independent appraiser in determining the fair market value of the Units as of the date of the Sale; and

(f) The proceeds from the Sale of the Units to Brewster will be allocated only to the participants who are defined in the Consent Order and Judgment (File No. 5:98CV744, July 1, 1999) entered by the United States District Court for the Northern District of Ohio Eastern Division (the Court).

For a more complete statement of the facts and representations supporting the Department's decision to grant this

exemption, refer to the notice of proposed exemption (the Notice) published on November 20, 2008 at 73 FR 70375.

*Effective Date:* This exemption is effective November 18, 2008.

*Written Comments and Hearing Requests:* The Department received one written comment and no hearing requests with respect to the Notice. The one comment letter was submitted by Brewster. In its letter, Brewster informed the Department that the subject Sale of the 2.5 Units was consummated on November 18, 2008, and Brewster requested that the exemption be made retroactive to that date. The Sale price was \$57,000. Brewster represented that the transaction had to be completed prior to the granting of the exemption by the Department to facilitate the sale of the Property by the Partnership's General Partners prior to the county filing a foreclosure action for real estate taxes unpaid by the Partnership. Brewster further represented that it will follow the terms of the Notice in all matters including allocation and adjustment of the purchase price if the Units previously owned by the Plan are sold by Brewster for more than \$57,000 (or bring more than \$57,000 in proceeds from foreclosure).

The Department has considered, the entire record, including the comment letter submitted by Brewster and has determined that the subject transaction satisfied the criteria of section 408(a) of the Act on the date of the transaction. Accordingly, the Department herein grants the exemption, effective November 18, 2008.

*For Further Information Contact:* Gary H. Lefkowitz of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must

operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of February, 2009.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. E9-3998 Filed 2-24-09; 8:45 am]

**BILLING CODE 4510-29-P**

**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**[Application Nos. and Proposed Exemptions; D-11447, Verizon Investment Management Company; D-11470, M&T Bank Corporation Pension Plan; D-11493, Schloer Enterprises, Inc. 401(k) Profit Sharing Plan (the Plan); and D-11501, Morgan Stanley & Co. Incorporated, et al.]**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of Proposed Exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone

number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. \_\_\_\_\_, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: "moffitt.betty@dol.gov", or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

#### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the

proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

#### Verizon Investment Management Company, Located in Basking Ridge, New Jersey

[Application No. D-11447]

#### Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR, Part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).<sup>1</sup>

#### Section I—Transaction(s)

If the proposed exemption is granted the restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code,<sup>2</sup> shall not apply, effective for the period January 1, through December 31, 2001, and for the period January 1, through December 31, 2003, to any transaction, as described in Part I of Prohibited Transaction Exemption 96-23 (PTE 96-23),<sup>3</sup> between a Verizon Plan or Verizon Plans, as defined, below, in section III(h) of this proposed exemption, and a party in interest, as defined, below, in section III(c) of this proposed exemption, with respect to such Verizon Plan; provided that: VIMCO satisfied the definition of an in-house asset manager (INHAM), as defined, below, in section

<sup>1</sup> For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

<sup>2</sup> The Department, herein, is not providing any retroactive or prospective relief for a transaction between a plan (a Verizon Plan or Verizon Plans), as defined, below, in section III(h) of this proposed exemption, and a party in interest with respect to such Verizon Plan, if such transaction was entered into or is entered into in years other than 2001 and 2003, nor is the Department, herein, providing any retroactive or prospective relief for any continuing transaction, or for any subsequent renewal or modification of a transaction that required or requires the consent of Verizon Investment Management Company (VIMCO), if entry into such continuing transaction, or entry into such renewal or modification occurred or occurs in years other than 2001 and 2003. In order to obtain relief for the entry into a transaction, or the entry into a continuing transaction or a subsequent renewal or modification of a transaction, as the case may be, VIMCO must have satisfied or must satisfy at the time of each such transaction, the terms and conditions as set forth in PTE 96-23 or, if applicable, the terms and conditions of PTE 96-23 as hereafter amended.

<sup>3</sup> 61 FR 15975, April 10, 1996.

III(a) of this proposed exemption, and had discretionary authority or control with respect to the assets of such Verizon Plan involved in each such transaction; and the conditions, as set forth, below, in sections I(a) through (c) and section II of this proposed exemption were satisfied;

(a) all the requirements of PTE 96-23 were satisfied for the period January 1, through December 31, 2001, and the period January 1, through December 31, 2003, except with respect to the annual audit requirement, as set forth in section I(h) of PTE 96-23;

(b) an exemption audit, as defined, in Part IV(f) of PTE 96-23, for the period January 1, through December 31, 2001, must have been completed by no later than December 31, 2003, and an exemption audit for the period January 1, through December 31, 2003, must have been completed by no later than December 31, 2005; and

(c) For the period beginning on the date of the publication in the **Federal Register** of the final exemption for application D-11447 and ending on the effective date of a final amendment to PTE 96-23, an independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act and who so represents in writing, conducts an exemption audit, as defined, below, in section III(f) of this proposed exemption, on an annual basis. Following completion of such exemption audit, the auditor shall issue a written report to the Verizon Plan or Verizon Plans that engage in transactions, described in section I of this proposed exemption, presenting such auditor's specific findings regarding the level of compliance: (1) With the policies and procedures adopted by VIMCO in accordance with Part I(g) of PTE 96-23; and (2) with the objective requirements of PTE 96-23. The written report shall also contain the auditor's overall opinion regarding whether VIMCO's program complied: (1) With the policies and procedures adopted by VIMCO; and (2) with the objective requirements of PTE 96-23. The exemption audit and the written report must be completed within six (6) months following the end of the year to which the audit relates.

#### Section II—General Conditions

(a) VIMCO must maintain or cause to be maintained, for a period of six (6) years, such records as are necessary to enable the persons described, below, in section II(b) of this proposed exemption, to determine whether the conditions of this proposed exemption have been met, except that:

(1) A prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of VIMCO, such records are lost or destroyed prior to the end of the six-year period, and

(2) no party in interest with respect to a Verizon Plan which engages in a transaction, described in section I of this proposed exemption, other than VIMCO, shall be subject to a civil penalty under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination, as required, below, by section II(b) of this proposed exemption.

(b)(1) Except as provided, below, in section II(b)(2) of this proposed exemption, and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to, above, in section II(a) of this proposed exemption, are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of a Verizon Plan that engages in a transaction, described in section I of this proposed exemption, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Verizon Plan or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described, above, in section II(b)(1)(ii) and (iii) of this proposed exemption, shall be authorized to examine trade secrets of VIMCO, or commercial or financial information which is privileged or confidential.

### Section III—Definitions

For the purposes of this proposed exemption:

(a) The term “in-house asset manager” or “INHAM,” means VIMCO, provided that VIMCO on January 1, 2001, was and continued thereafter to be:

(1) either (A) a direct or indirect wholly-owned subsidiary of Verizon, or a direct or indirect wholly-owned subsidiary of a parent organization of Verizon, or (B) a membership non-profit corporation a majority of whose members are officers or directors of such an employer or parent organization; and

(2) an investment adviser registered under the Investment Advisers Act of 1940 that, as of the last day of its most recent fiscal year, had and continued thereafter to have under its management and control total assets attributable to Verizon Plans maintained by affiliates of

VIMCO, as defined, below, in section III(b) of this proposed exemption, in excess of \$50 million; and provided that if VIMCO had no prior fiscal year as a separate legal entity as a result of its constituting a division or group within Verizon’s organizational structure, then this requirement is deemed to have been met as of the date during VIMCO’s initial fiscal year as a separate legal entity that responsibility for the management of such assets in excess of \$50 million was transferred to it from Verizon.

In addition, Verizon Plans maintained by affiliates of VIMCO and/or by VIMCO, had, as of January 1, 2001, and continued thereafter to have, aggregate assets of at least \$250 million, calculated as of the last day of each such Verizon Plan’s reporting year.

(b) For purposes of sections III(a) and III(h) of this proposed exemption, an “affiliate” of VIMCO means a member of either:

(1) A controlled group of corporations, as defined in section 414(b) of the Code, of which VIMCO is a member, or

(2) a group of trades or businesses under common control, as defined in section 414(c) of the Code, of which VIMCO is a member; provided that “50 percent” shall be substituted for “80 percent” wherever “80 percent” appears in section 414(b) or 414(c) of the Code or the rules thereunder.

(c) The term, “party in interest,” means a person described in section 3(14) of the Act and includes a “disqualified person,” as defined in section 4975(e)(2) of the Code.

(d) The term, “control,” means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) For purposes of this proposed exemption, the time as of which any transaction occurred is the date upon which the transaction was entered into. In addition, the time as of which any renewal or modification of any transaction occurred is the date upon which the renewal or the modification of the transaction was entered into. For any transaction that required the consent of VIMCO that was entered into, renewed, or modified, as the case may be, during the period from January 1, through December 31, 2001, or during the period from January 1, through December 31, 2003, the requirements of this proposed exemption must have been satisfied at the time such transaction was entered into, or was renewed, or was modified, as the case may be. In addition, in the case of a transaction that is continuing, the

transaction is deemed to occur until it is terminated.

Nothing in this paragraph shall be construed as exempting a transaction entered into by a Verizon Plan which becomes a transaction described in section 406 of the Act or section 4975 of the Code, while the transaction is continuing, unless the conditions of PTE 96–23 were met at the time the transaction was entered into, or at the time the transaction would have become prohibited but for PTE 96–23. In determining compliance with the conditions of PTE 96–23 at the time that the transaction was entered into for purposes of the preceding sentence, Part I(e) of PTE 96–23, will be deemed satisfied if the transaction was entered into between a Verizon Plan and a person who was not then a party in interest.

(f) Exemption Audit. An “exemption audit” of a Verizon Plan must consist of the following:

(1) A review by an independent auditor of the written policies and procedures adopted by VIMCO, pursuant to Part I(g) of PTE 96–23, for consistency with each of the objective requirements of PTE 96–23, as described, below, in section III(g) of this proposed exemption.

(2) A test of a sample of VIMCO’s transactions during the audit period that is sufficient in size and nature to afford the auditor a reasonable basis: (A) To make specific findings regarding whether VIMCO is in compliance with (i) the written policies and procedures adopted by VIMCO, pursuant to Part I(g) of PTE 96–23 and (ii) the objective requirements of PTE 96–23, as described, below, in section III(g) of this proposed exemption and (B) to render an overall opinion regarding the level of compliance of VIMCO’s program with section III(f)(2)(A)(i) and (ii) of this proposed exemption.

(3) A determination as to whether VIMCO satisfied the definition of an INHAM, as defined, above, in section III(a), of this proposed exemption; and

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor’s findings.

(g) For purposes of section III(f), above, of this proposed exemption, the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by VIMCO to assure compliance with each of these requirements:

(1) The definition of an INHAM in section III(a) of this proposed exemption.

(2) The requirements of Part I and Part I(a) of PTE 96–23 regarding the discretionary authority or control of VIMCO with respect to the assets of a Verizon Plan involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of such Verizon Plan to enter into the transaction.

(3) That any procedure for approval or veto of the transaction meets the requirements of Part I(a) of PTE 96–23.

(4) For a transaction described in Part I of PTE 96–23:

(A) that the transaction is not entered into with any person who is excluded from relief under Part I(e)(1), Part I(e)(2) of PTE 96–23, to the extent such person has discretionary authority or control over the plan assets involved in the transaction, or Part I(f) of PTE 96–23, and

(B) that the transaction is not described in any of the class exemptions listed in Part I(b) of PTE 96–23.

(h) The term, “Verizon Plan(s),” means a plan or plans maintained by VIMCO or an affiliate of VIMCO.

**DATES:** *Effective Date:* If, granted, this proposed exemption will be effective for the period from January 1, through December 31, 2001, and from January 1, through December 31, 2003.

#### Summary of Facts and Representations

1. VIMCO is a wholly-owned subsidiary of GTE Corporation, which in turn is a wholly-owned subsidiary of Verizon Communications Inc. (Verizon). VIMCO is registered as an investment adviser under the Investment Advisers Act of 1940. VIMCO has been delegated the authority for the investment of the assets of the employee benefit trusts of Verizon and of most of Verizon’s domestic subsidiaries (excluding Verizon Wireless). In this capacity, VIMCO’s primary function is to act as investment manager or adviser for these employee benefit trusts, although VIMCO also performs investment management or advisory services for other entities related to Verizon.

As of June 30, 2007, VIMCO had in excess of \$68.2 billion in assets under management. The assets of the Bell Atlantic Master Trust (the BAMT) comprise 63.3 percent (63.3%) of this amount. The BAMT holds the assets of seventeen (17) Verizon pension plans (the Verizon Pension Plans)<sup>4</sup> and a

portion of the assets of two (2) of the Verizon savings plans (the Verizon Savings Plans).<sup>5</sup> The Verizon Master Savings Trust (MST) holds the assets of five (5) Verizon Savings Plans, representing 26.3 percent (26.3%) of VIMCO’s assets under management. In addition, VIMCO manages \$5.5 billion in assets for fourteen (14) Voluntary Employees Beneficiary Associations (VEBAs), which are employee benefit trusts that hold the assets of various health, dental, life, and long-term disability plans.<sup>6</sup> A VIMCO subsidiary acts as a general partner to two (2) limited partnerships established by VIMCO in which two (2) VEBAs and seven (7) VEBAs, respectively, invest.

VIMCO manages these assets in part by selecting third-party investment managers. In addition, VIMCO directly manages eleven (11) accounts for the Verizon Pension Plans within the BAMT. The assets in these accounts total \$8.8 billion and include actively-managed stock funds, passively-managed stock funds (*i.e.*, index funds), an international futures fund, and a short term fixed income fund. VIMCO also selects private placement fund investments (usually investment limited partnerships offered by venture capital and buy-out funds) and real estate fund and natural resources investments for the Verizon Pension Plans, which currently total \$6.7 billion.

2. Mellon Bank, N.A. (Mellon) acts as trustee of the BAMT and the fourteen (14) Verizon VEBA trusts and as

Hourly-Paid Employees’ Pensions; (5) GTE South Incorporated (Southeast) Plan for Hourly-Paid Employees’ Pensions; (6) GTE Southwest Incorporated Plan for Hourly-Paid Employees’ Pensions; (7) GTE North Incorporated Pension Plan for Hourly-Plan Employees of Illinois; (8) GTE North Incorporated Pension Plan for Hourly-Paid Employees of Michigan; (9) GTE North Incorporated Pension Plan for Hourly-Paid Employees of Ohio; (10) GTE North Incorporated Pension Plan for Hourly-Paid Employees of Pennsylvania; (11) GTE North Incorporated Pension Plan for Hourly-Paid Employees of Wisconsin; (12) Hourly Employees Retirement System of GTE Hawaiian Telephone Company Incorporated; (13) GTE Supply Pension Plan for Union Represented Employees; (14) Verizon Pension Plan for New York and New England Associates; (15) Verizon Pension Plan for Mid-Atlantic Associates; (16) Verizon Enterprises Management Pension Plan; and (17) Verizon Management Pension Plan.

<sup>5</sup> The Verizon Savings Plans are: (1) Verizon Savings Plan for Management Employees; (2) Verizon Savings and Security Plan for West Region Hourly Employees; (3) Verizon Savings and Security Plan for Mid-Atlantic Associates; (4) Verizon Savings and Security Plan for New York and New England Associates.

<sup>6</sup> The Verizon health and welfare plans are: (1) Verizon Group Life Insurance Plan for New York & New England Associates Plan for Group Insurance; (2) Verizon Plan 550; (3) Verizon Post—1995 Collectively Bargained Retiree Health Plan—(Pre 1993 Retirees); (4) Verizon Post—1995 Collectively Bargained Retiree Health Plan —(Post 1992 Retirees).

custodian for the two (2) VEBA investment limited partnerships. Fidelity Management Trust Company acts as trustee of the MST.

3. Since 1996, VIMCO has relied on Prohibited Transaction Exemption 96–23 (PTE 96–23) which provides exemptive relief for that portion of the assets of an employee benefit plan that is managed by an INHAM, provided that the conditions of the class exemption are met, including the completion of an annual exemption audit. Prior to 2004, VIMCO relied on an independent accounting firm to conduct the annual exemption audits. However, in 2004, VIMCO learned that the accounting firm would no longer provide PTE 96–23 exemption audit services.

In a letter to VIMCO dated October 31, 2006, the Director of the New York Regional Office of the Employee Benefits Security Administration (the Regional Office), informed VIMCO that performance of the audit did not comply with the requirements of the class exemption and that VIMCO could not rely on PTE 96–23 for exemptive relief. As a result of discussions between the Regional Office and VIMCO, it was concluded that VIMCO would seek an individual administrative exemption for the 2003 transactions.

VIMCO subsequently notified the Regional Office that based upon their good faith understanding of the audit requirement, the 2001 INHAM audit was not begun until the 2002 audit was started in July 2003, and that both audits were completed in October 2003. This delay was attributable to the merger of Bell Atlantic and GTE to form Verizon which occurred in June 2000, and which led to consolidation of the companies’ respective investment management firms in late 2000 and 2001. The plan trusts also were merged at the same time, and the investment options for the savings plans were extensively redesigned. Accordingly, VIMCO included relief for 2001 in its request for an individual administrative exemption.

VIMCO seeks a retroactive individual administrative exemption from the restrictions of section 406(a)(1)(A) through (D) of the Act and section 4975(c)(1)(A) through (D) of the Code, effective for the period from January 1, through December 31, 2001, and the period from January 1, through December 31, 2003. In this regard, VIMCO requests an individual administrative exemption which would provide relief substantially identical to that provided under Part I of PTE 96–23, subject to appropriate terms and conditions.

<sup>4</sup> The Verizon Corporate Services Group Inc. *et al.* Pension Plans Report covers the following defined benefit plans: (1) GTE California Incorporated Plan for Hourly-Paid Employees’ Pensions; (2) GTE Florida Incorporated Plan for Hourly-Paid Employees’ Pension; (3) GTE South Incorporated (Kentucky) Plan for Hourly-Paid Employees’ Pensions; (4) GTE Northwest Incorporated Plan for

4. VIMCO maintains that it has satisfied the Department's requirements for retroactive relief. At the time of the 2001 and 2003 transactions, VIMCO maintains that it reasonably believed in good faith that it was acting in full compliance with the requirements of PTE 96-23. In scheduling the 2001 and 2003 audits, VIMCO relied on the fact that, in the more than ten (10) years since the Department granted PTE 96-23, there has been no guidance from the Department as to the interpretation of the audit requirement. Furthermore, VIMCO points out that there is no indication in the class exemption itself or the notices of proposed and final exemptions for PTE 96-23 that there is a deadline for performing the audits, nor has there been any similar public pronouncement from the Department to this effect.

5. The requested individual administrative exemption would cover transactions entered into by VIMCO, acting as an INHAM on behalf of the Verizon Plans with persons who were parties in interest with respect to such Verizon Plans solely by reason of providing services to such Verizon Plans, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act, for the periods from January 1, through December 31, 2001, and January 1, through December 31, 2003. The proposed exemption, if granted, would be conditioned on the following:

(a) The requirements of PTE 96-23 were met for the relevant periods, except with respect to the annual audit requirement of PTE 96-23, Part I(h), and

(b) An independent auditor, who had appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act and who so represented in writing, conducted an exemption audit for each such plan year no later than, respectively, December 31, 2003, (for plan year 2001) and December 31, 2005, (for plan year 2003). Following completion of the exemption audits, the auditor issued a written report for each audit to the Verizon Plans presenting its specific findings regarding the level of compliance with the policies and procedures adopted by VIMCO, which reports contained no adverse findings. Further, VIMCO represents that it has maintained records sufficient to permit the Department and others to determine whether the conditions of this proposed exemption have been met. In addition, the retroactive relief provided by this proposed exemption is subject to VIMCO complying with the conditions of this proposed exemption at all times

during the period beginning on the date of the publication in the **Federal Register** of the final exemption for application D-11447 and ending on the effective date of a final amendment to PTE 96-23.

6. It is represented that the proposed exemption is administratively feasible, because the Department would not have to monitor implementation or enforcement. In this regard, VIMCO in managing the assets of the Verizon Plans during the years 2001 and 2003, represented that it at all times acted in good faith compliance with the terms of PTE 96-23. This included obtaining after year-end the required independent exemption audit, which found that VIMCO had been operating as an INHAM during 2001 and 2003 in accordance with the objective requirements of PTE 96-23.

7. VIMCO represents that the proposed exemption is in the interests of Verizon Plans and the participants and beneficiaries of such Verizon Plans. Like many corporations, Verizon utilizes an INHAM for its employee benefit plans, to reduce costs while retaining high-quality management devoted largely to its plans' asset management activities. In carrying out its responsibilities, VIMCO, acting as an INHAM, relied on PTE 96-23. Apart from the issue raised by the audit timing requirement, VIMCO was in full compliance with the requirements of PTE 96-23, which compliance was in the interests of the Verizon Plans and the participants and beneficiaries of such Verizon Plans.

8. VIMCO represents that the proposed exemption is protective of the rights of participants and beneficiaries of the Verizon Plans. In this regard, PTE 96-23 was designed to apply to transactions that have little, if any, potential for abuse and that would constitute only technical prohibited transactions. VIMCO maintains that the proposed exemption, which is substantially modeled on PTE 96-23, would, therefore, be protective of the rights of the participants and beneficiaries of the Verizon Plans, because: (a) The timing of the 2001 and 2003 audits caused no harm to any of the Verizon Plans that participated in the investment transactions for which VIMCO has claimed a retroactive individual administrative exemption; and (b) VIMCO was otherwise fully compliant with the requirements of PTE 96-23. In addition, VIMCO maintains that sufficient protections were in place during the effective dates of this proposed exemption, given that the 2001 annual audit completed in October 2003, and the 2003 annual audit

completed in December 2005, indicated no adverse findings.

Further, it is represented that only a small percentage of the fair market value of the total assets of each affected Verizon Plan was involved in transactions covered by the proposed exemption. In this regard, approximately 3.7 percent (3.7%) of the value of the assets in the BAMT were involved in 2001 in transactions covered by the proposed exemption and approximately 5.6 percent (5.6%) of the value of the assets in the BAMT were involved in 2003 in transactions covered by the proposed exemption.

9. In summary, VIMCO represents that the proposed exemption satisfies the statutory requirements for relief under section 408(a) of the Act because:

(a) VIMCO has acted in reasonable, good faith compliance with PTE 96-23 at all relevant times;

(b) The 2001 annual audit, which was completed in October 2003, and the 2003 annual audit, which was completed in December 2005, were performed by an independent auditor who had appropriate technical training or experience and proficiency in the fiduciary responsibility provisions of the Act;

(c) The 2001 and 2003 annual audits indicated no adverse findings; and

(d) VIMCO will maintain or cause to be maintained for a period of six (6) years the records necessary to enable the Department and others to determine whether the conditions of this proposed exemption are met.

#### Notice to Interested Persons

Those persons who may be interested in the pendency of the proposed exemption include the named fiduciary of each of the Verizon Plans that utilized VIMCO's investment management or advisory services for the 2001 and/or 2003 plan year. It is represented that the named fiduciary of each of these Verizon Plans will be provided with a copy of the notice of this proposed exemption (the Notice), plus a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2) of the Department's regulations, which will advise such named fiduciaries of the right to comment and to request a hearing. The Notice and the Supplemental Statement will be provided to all such named fiduciaries within fifteen (15) days of the publication of the Notice in the **Federal Register**. The Notice and the Supplemental Statement will be sent by first class mail to such named fiduciaries. The Department must receive written comments and requests

for a hearing no later than forty-five (45) days from the date of the publication of the Notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

Angelena C. Le Blanc of the Department, telephone (202) 693-8540 (This is not a toll-free number).

**M&T Bank Corporation Pension Plan,  
Located in Buffalo, NY 14203-2309**

[Application No. D-11470]

*Proposed Exemption*

The Department is considering granting an exemption as set forth below under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

**Section I—Exemption for In-Kind  
Redemption of Assets**

Effective January 18, 2007, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the in-kind redemptions (the Redemptions) of shares (the Shares) held by the M&T Bank Corporation Pension Plan (the Plan) of the MTB Mid Cap Growth Fund and the MTB Large Cap Stock Fund (the Fund(s)) for which affiliates of Manufacturers and Traders Trust Company (M&T) provide investment advisory services and other services.

**Section II. Conditions**

This proposed exemption is subject to the following conditions:

(a) The Plan paid no sales commissions, redemption fees, or other similar fees in connection with the Redemptions (other than customary transfer charges paid to parties other than M&T and affiliates of M&T (M&T Affiliates)).

(b) The assets transferable to the Plan consisted of only cash and Transferable Securities, as defined in Section III;

(c) With certain exceptions explained in Representation 6 below, the Plan received a pro rata portion of the Transferable Securities, pursuant to the Redemptions that, when added to the cash received, was equal in value to the number of Shares redeemed for such Transferable Securities, as determined in a single valuation (using sources independent of M&T and M&T affiliates) performed in the same manner and as of the close of business on the same day as the day of receipt of the Transferable Securities, in accordance with Rule 2a-

4 under the Investment Company Act of 1940, as amended from time to time (the 1940 Act), and the then-existing procedures established by the Fund that are in compliance the 1940 Act;

(d) Neither M&T or any M&T Affiliate received any fees, including any fees payable pursuant to Rule 12b-1 under the 1940 Act, in connection with the Redemptions;

(e) M&T retained an Independent Fiduciary, as such term is defined in Section III. The Independent Fiduciary determined that the terms of the Redemptions were fair to the participants of the Plan and comparable to and no less favorable than terms obtainable at arm's length between unaffiliated parties, and that the Redemptions were in the best interest of the Plan and its participants and beneficiaries;

(f) M&T or the relevant Fund provided to the Independent Fiduciary a written confirmation regarding such Redemptions containing:

(1) The number of Shares held by the Plan immediately before the Redemptions (and the related per Share net asset value and the total dollar value of the Shares held),

(2) the identity (and related aggregate dollar value) of each Transferable Security provided to the Plan at the time of the Redemptions, including each Transferable Security valued in accordance with Rule 2a-4 under the 1940 Act and the then-existing procedures established by the Fund (using sources independent of M&T and M&T Affiliates) for obtaining prices from independent pricing services or market-makers,

(3) the market price of each Transferable Security received by the Plan at the time of the Redemptions, and

(4) the identity of each pricing service or market-marker consulted in determining the value of each Transferable Security at the time of the Redemptions.

(g) The value of the Transferable Securities and cash received by the Plan for each redeemed Share equaled the net asset value of such Share at the time of the transaction, and such value equaled the value that would have been received by any other investor for shares of the same class of the Fund at the time;

(h) For a period of six months following the Redemptions, MTB Investment Advisors (MTBIA), an M&T Affiliate and the investment advisor to the MTB Group of Funds (MTB Funds) reimbursed the Plan for commissions and fees incurred in connection with Transferable Securities received as a

result of the Redemptions and subsequently sold;

(i) Following the Redemptions, M&T, on behalf of the Plan, has paid and will continue to pay total annual expenses, including investment management fees for the Plan's investment in the separate accounts;

(j) Subsequent to the Redemptions, the Independent Fiduciary performs a post-transaction review that includes, among other things, testing a sampling of material aspects of the Redemptions deemed in its judgment to be representative, including pricing;

(k) M&T maintains, or causes to be maintained, for a period of six years from the date the Redemptions, such records as are necessary to enable the person described in paragraph (l)(1) below to determine whether the conditions of this exemption have been met, except that

(1) If the records necessary to enable the persons described in Section II(l)(1) to determine whether the conditions of this exemption have been met are lost, or destroyed, due to circumstances beyond the control of M&T, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) no party in interest with respect to the Plan other than M&T shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if such records are not maintained or are not available for examination as required by Section II(k).

(l)(1) Except as provided in this Section II(l)(2) and notwithstanding any provision of section 504(a)(2) and (b) of the act, the records referred to in Section II(k) are unconditionally available at their customary locations for examination during normal business hours by:

(i) any duly authorized employee or representative of the United States Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission,

(ii) any fiduciary of the Plan or any duly authorized representative of such participant or beneficiary,

(iii) any participant or beneficiary of the Plan or duly authorized representative of such participant or beneficiary,

(iv) any employer whose employees are covered by the Plan, and

(v) any employee organization whose members are covered by such Plan;

(2) None of the persons described in Section II(l)(1)(ii) through (v) shall be authorized to examine trade secrets of M&T, the Funds, or the investment

advisor for the Funds, or commercial or financial information which is privileged or confidential; and

(3) Should M&T, the Funds, or the investment advisor for the Funds refuse to disclose information on the basis that such information is exempt from disclosure pursuant to Section II(1)(2) above, M&T, the Funds, or the investment advisor shall, by the close of the 30th day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

### Section III—Definitions

For purposes of this proposed exemption,

(a) The term “M & T” means Manufacturers and Traders Trust Company which is a wholly-owned subsidiary of the M&T Bank Corporation.

(b) The term “affiliate” means:

(1) Any person (including a corporation or partnership) directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term “net asset value” means the amount for purposes of pricing all purchases and sales calculated by dividing the value of securities, determined by a method as set forth in the Fund’s prospectus and statement of additional information, and other assets belonging to the Fund, less the liabilities charged to each such Portfolio, by the number of outstanding shares.

(e) The term “Independent Fiduciary” means a fiduciary who is:

(1) Independent of and unrelated to M&T and its affiliates, and

(2) appointed to act on behalf of the Plan with respect to the Redemptions.

For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to M&T if:

(3) Such fiduciary directly or indirectly controls, is controlled by or is under common control with M&T;

(4) Such fiduciary, directly or indirectly receives any compensation or other consideration in connection with

any transaction described in this exemption (except that an independent fiduciary may receive compensation from M&T in connection with the transactions discussed herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary’s ultimate decision); or

(5) such fiduciary receives, in its current fiscal year, from M&T or its affiliates, an amount that would have exceeded one percent (1%) of such fiduciary’s gross income in the prior fiscal year.

(f) the term “Transferable Securities” shall mean securities

(1) for which market quotations are readily available from persons independent of M&T as determined pursuant to procedures established by the Funds under Rule 2a–4 of the 1940 Act; and

(2) which are not

(i) Securities which, if publicly offered or sold, would require registration under the Securities Act of 1933;

(ii) Securities issued by entities in countries which (A) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Funds, or (B) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange;

(iii) Certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require trading facilities or can only be traded with the counterparty to the transaction to effect a change in beneficial ownership;

(iv) Cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements);

(v) Other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable); and

(vi) Securities subject to “stop transfer” instructions or similar contractual restrictions on transfer.

### Summary of Facts and Representations

1. M&T is a New York state chartered bank headquartered in Buffalo, New York. M&T is a wholly-owned subsidiary of M&T Bank Corporation, a regulated bank holding company and financial holding company under the Bank Holding Company Act of 1956, as

amended, and is subject to the supervision of the Governors of the Federal Reserve System.

2. M&T sponsors the Plan which is a defined benefit plan maintained by M&T to provide retirement benefits to eligible employees of M&T and its subsidiaries, and is intended to satisfy the qualification requirements of section 401(a) of the Code. As of January 1, 2007, the number of participants, beneficiaries and others entitled to benefits under the Plan total 22,837. Based on unaudited financial statements, as of December 31, 2007, the Plan had total assets of \$617,811,222. M&T makes contributions to the Plan as required by government regulation or deemed appropriate by management after considering the fair value of Plan assets, expected returns on such assets, and the present value of the Plan’s benefit obligations. Contributions under the Plan are deductible to the extent permitted by section 404 of the Code. Participants are not permitted to make contributions to the Plan or to direct investments under the Plan. M&T serves as trustee of the Plan and manages the Plan.

3. Effective April 1, 2003, M&T acquired Allfirst Financial, Inc. (Allfirst). Allfirst’s defined benefit plan merged into the Plan. The Allfirst defined benefit plan had been invested in Allfirst’s proprietary mutual fund (the Ark Funds), open-end investment companies registered under the 1940 Act, pursuant to the terms and conditions of Prohibited Transaction Exemption 77–3, 42 FR 18734 (1977). In August 2003, M&T merged the Ark Funds and its own Vision Group of Funds into a new proprietary mutual fund family called the MTB Group of Funds, as a result of which the Plan investments in the Ark Funds were transferred to the MTB Funds.<sup>7</sup> As of September 30, 2006, the Plan held approximately \$486 million in investments, of which approximately 30% was invested in the MTB Funds.

<sup>7</sup> M&T represents that no exemptive relief was necessary for the merger itself because the merger was conducted between the Ark Funds and the Vision Group of Funds—which as investment companies registered under the 1940 Act were not subject to the Act pursuant to Section 401(b)(1) of the Act. M&T also represents that the Plan’s continued investment in the MTF funds following the merger was covered by PTE 77–3. The Department is offering no view as to whether the merger was not subject to the Act pursuant to section 401(b)(1) of the Act and whether the Plan’s continued investment in the MTB Funds satisfied the conditions of PTE 77–3.

4. The Plan was invested in several MTB Fund portfolios described

graphically as follows showing the Plan's investments in the MTB Funds

before and after the Redemptions on January 18, 2007:

The MTB fund name	The plan's investment in the MTB fund before 1/17/07 (million)	The plan's investment in the MTB fund after 1/19/07 (million)
Small Cap Growth .....	\$17.6	\$17.5
Small Cap Stock .....	\$24.2	\$24.1
Equity Income .....	\$3.8	\$3.9
Large Cap Value .....	\$11.1	\$11.2
Multi Cap Growth .....	\$5.1	\$5.1
Intl Equity Inst I .....	\$60.8	\$61.2
Mid Cap Growth .....	\$12.3	\$0
Large Cap Stock .....	\$19.8	\$0
Total MTB Investment .....	\$154.8	\$122.8

In 2006, M&T began considering redemptions of the Plan's investments in the Small Cap Growth Fund, the Multi Cap Growth Fund, the Mid Cap Growth Fund and the Large Cap Stock Fund in order to reduce investment fees for asset classes that the Plan could manage through separately managed accounts.

5. The board of the MTB Funds exercised its right, as stated in the prospectus, to make payments in securities rather than cash. M&T determined that the Plan's investments in the Funds were large enough so that an all-cash redemption would adversely impact the Funds and to proceed with the Redemptions. On January 18, 2007, the Plan's investment in the MTB Mid Cap Growth Fund and the Large Cap Stock Fund, which are the subject of this proposed exemption, were redeemed for approximately \$32 million. M&T represents that the Small Cap Redemption will occur pursuant to a prospective exemption from the Department at a later date. The Plan's Multi Cap Growth Fund was redeemed for approximately \$5,505,000 in cash in July 2007.<sup>8</sup>

6. M&T represents that the Redemptions were done pursuant to all applicable regulatory requirements and M&T and its affiliates were not able to use their influence or control with respect to the Redemptions. The Redemptions were carried out on a pro rata basis as to the number and kind of Transferable Securities transferred to the Plan. The Transferable Securities transferred in-kind from the mutual funds were a pro rata portion of the Funds' holdings to the extent possible,

subject to adjustments for odd lots and securities that could not be transferred including fractional shares, as determined in accordance with the Funds' valuation and in-kind redemption procedures that are designed to be objective and to comply with the requirements of the 1940 Act.

7. M&T represents that the board of the MTB Funds adopted procedures for the fulfillment of in-kind redemptions requests in conformity with the Securities and Exchange Commission (SEC) no-action letter to Signature Financial Group.<sup>9</sup> Pursuant to these procedures, the value of each Transferable Security was determined as

<sup>9</sup> In the no action letter to Signature Financial Group, Inc. (Dec. 28, 1999), the Division of Investment Management of the SEC states that it will not recommend enforcement action pursuant to section 17(a) of the 1940 Act for certain in-kind distributions of portfolio securities to an affiliate of a mutual fund. Funds seeking to use this "safe harbor" must value the securities to be distributed to an affiliate in an in-kind distribution "in the same manner as they are valued for purposes of computing the distributing fund's net asset value." M&T represents that it has adopted procedures in accordance with the Signature Financial Letter for use in affiliated transactions, and those procedures must be followed for transactions with the Plan, as the Plan is treated as an affiliate under the 1940 Act of the funds whose shares are being redeemed. Those procedures are reflected in the terms and conditions of the requested exemption.

The Signature Financial letter does not address the marketability of the securities distributed in-kind. The range of securities distributed pursuant to this safe harbor may therefore be broader than that range of securities covered by SEC Rule 17a-7, 17 CFR 270.17a-7. In granting past exemptive relief with respect to in-kind transactions involving mutual funds, the Department has required that the securities being distributed in-kind fall within Rule 17a-7. One of the requirements of Rule 17a-7 is that the securities are those for which "market quotations are readily available." Under the requested exemption, exemptive relief also would be limited to in-kind distribution of securities for which market quotations were readily available. The value of any other security would be paid to the plan in cash. In addition, consistent with the Signature Financial letter, the procedures adopted by the MTB Funds require pro rata distribution for any in-kind redemptions.

of the close of trading on the New York Stock Exchange for a particular day,<sup>10</sup> using market prices such as the last sale price or the most recent bid and asked quotations. Following completion of the Redemptions, the Funds confirmed in writing:

(a) The number of Fund shares held by the Plan immediately before the Redemptions (and the related per share net asset value and the aggregate dollar value of the shares held);

(b) the identity (and related aggregate dollar value) of each Transferable Security provided to the Plan at the time of the Redemptions, including each Transferable Security valued in accordance with Rule 2a-4 under the 1940 Act and the then-existing procedures established by the board of the MTB Fund (using sources independent of M&T and M&T Affiliates) for obtaining current prices from independent pricing services and market-makers;

(c) the price of such Transferable Security at the time of such Redemptions; and

(d) the identity of each pricing service or market-maker consulted in determining the value of such Transferable Securities.

8. M&T represents that at the time of the Redemptions, it was unaware that they had engaged in a prohibited transaction. Shortly thereafter, the Redemptions came to the attention of M&T's internal counsel, who consulted

<sup>10</sup> A common point in time each day is needed for valuing the Fund shares, (i.e., for determining the value of all the securities held by the Fund to arrive at the Funds' net asset value for the day. Even if the Funds hold Transferable Securities that are traded on exchanges that close at different times, or remain open 24 hours, their values are determined as of the close of trading on the New York Stock Exchange (normally 4 p.m. Eastern Standard Time) for purposes of calculating Fund share value as of that time, and that value is then used for processing all orders to purchase and redeem shares of the Funds that were received before that time.

<sup>8</sup> M&T represents that to the extent exemptive relief may have been necessary, PTE 77-3 would have provided such relief because the transaction involved an in-house plan of the Funds' investment advisor and its affiliates. The Department is offering no view as to whether the in-kind cash redemption satisfied the conditions of PTE 77-3.

outside counsel. After further discussions and review of the details of the Redemptions, M&T decided to pursue a request for a retroactive individual exemption and retain an independent fiduciary.

9. In an engagement letter dated May 25, 2007, U.S. Trust Company, N.A. (U.S. Trust), a national bank, agreed to serve as the Independent Fiduciary for purposes of this exemption. U.S. Trust confirmed to M&T its qualifications to serve as a fiduciary and acknowledged it is a fiduciary to the Plan, as defined in section 3(21) of Act, and it has represented to M&T that it understands and accepts the duties, responsibilities and liabilities in acting as a fiduciary under the Act for the Plan. U.S. Trust confirmed it is independent from M&T because it is not controlled by or under common control with M&T, does not control M&T, and that U.S. Trust receives, in its current fiscal year, from M&T or its affiliates, an amount that would not have exceeded one percent (1%) of such fiduciary's gross income in the prior fiscal year.

10. In its report dated February 1, 2008, U.S. Trust compared a hypothetical cash redemption with the Redemptions. U.S. Trust found that because of the size of the Plan's investment in the Funds, a large cash redemption would be time consuming. This time lag would impose opportunity costs on the Plan because the Plan would not be invested in Transferable Securities that have the potential to match the Plan's stated objectives for this portion of the Plan's assets. Therefore, U.S. Trust represents that an in-kind redemption would avoid such problems.

11. U.S. Trust was provided the Pre-Trade Analysis which detailed the holdings of each of the Funds and the calculation of the pro rata portion of the securities and cash due to the Plan for the Redemptions. U.S. Trust found that the Pre-Trade Analysis was consistent with the proposed transfer methodology. The pro rata share of the Funds due to the Plan was calculated by multiplying the Plan's ownership interest in each of the Funds by the total market value of each of the Funds. Securities that were excluded from the pro rata distribution included restricted securities, odd lots, fractional shares, and securities that traded in markets that restrict in-kind redemptions (Ineligible Securities). Ineligible Securities were identified and offsetting adjustments were made to the Plan's pro rata share of the Fund's cash position.

U.S. Trust reviewed a sample of the securities listed in the Pre-Trade Analysis. The sample was randomly

selected and represented approximately 20% of the securities within each of the Funds. In addition, U.S. Trust confirmed that the pro rata share due to the Plan and the offsetting adjustments for Ineligible Securities were calculated properly for this sample.

12. According to U.S. Trust, for a period of six months immediately commencing after the Redemptions, MTBIA agreed to reimburse the Plan for commissions and fees incurred in connection with Transferable Securities received as a result of the Redemptions and subsequently sold. Accordingly, the Plan was reimbursed \$9,832 for brokerage and SEC fees from sales of Transferable Securities in the separate accounts over this period.

13. U.S. Trust represents that the Redemptions resulted in significant savings for the Plan. Prior to the Redemptions, the Plan paid the ongoing investment management fees and other expenses charged by the Funds. According to U.S. Trust, the investment management fees and other expenses for the Mid Cap Growth Fund and Large Cap Stock Fund were 113 and 109 basis points respectively. As a result of the Redemptions, the Plan will no longer be paying these fees.

Further, the separate accounts have annual operating expenses including investment management fees and other expenses of 40 basis points per annum charged internally to M&T. Because M&T will pay for these annual operating expenses generated by the separate accounts, the Plan will no longer pay any operating expenses.

14. U.S. Trust has determined that:

(a) The Redemptions were fair to participants of the Plan and no less favorable than the terms that would be reached at arm's length between unaffiliated parties;

(b) the method used to conduct the Redemptions was comparable to, and no less favorable than, a similar in-kind redemption reached at arm's length between unaffiliated parties;

(c) the Plan did not pay any commissions or fees in connection with the Redemptions; and

(d) The Plan will no longer pay annual operating expenses including investment fees with respect to its investment in the separate accounts.

15. In summary, the M&T represents that the transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) The Independent Fiduciary reviewed the Redemptions and determined that the Redemptions were in the best interest of the Plan's participants and beneficiaries; (b) The Independent Fiduciary reviewed the

Redemptions and comparing them to a hypothetical cash-only redemption determined the Redemptions were more favorable than a cash-only redemption; (c) Subsequent to the Redemptions, the Independent Fiduciary performed a post-transaction sampling of the material aspects of the Redemption including pricing; (d) For a period of six months following the Redemptions, MTBIA reimbursed the Plan for commissions and fees incurred in connection with Transferable Securities received as a result of the Redemptions and subsequently sold; and (e) M&T, on behalf of the Plan, has paid and will continue to pay the total annual expenses including investment management fees for the separate accounts.

#### Notice to Interested Persons

Notice of the proposed exemption will be given to interested persons within 30 days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will be given to interested persons by first class mail. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 15 days of the publication of the notice of proposed exemption in the **Federal Register**.

*For Further Information Contact:* Mr. Anh-Viet Ly of the Department, telephone 202-693-8648. (This is not a toll-free number.)

#### Schloer Enterprises, Inc., 401(k) Profit Sharing Plan (the Plan), Located in Pottstown, PA

[Application No. D-11493]

#### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions in sections 406(a)(1)(A), 406(a)(1)(D), and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (c)(1)(D) through (E) of the Code, shall not apply to the sale of a certain parcel of real property (the Property) by the Plan to Craig J. Schloer, a party in

interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The sale is a one-time transaction for cash;

(b) The terms and conditions of the sale are at least as favorable to the Plan as those that the Plan could obtain in an arm's length transaction with an unrelated party;

(c) The sales price is the greater of \$381,991 or the fair market value of the Property as of the date of the transaction, as determined by a qualified, independent appraiser;

(d) The Plan pays no commissions, costs, or other expenses in connection with the sale; and

(e) The Plan fiduciary will review and approve the methodology used by the qualified, independent appraiser, ensure that such methodology is properly applied in determining the Property's fair market value, and will also determine whether it is prudent to go forward with the proposed transaction.

#### Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan. Schloer Enterprises, Inc. (the Employer), located in Pottstown, Pennsylvania, is the Plan sponsor. As of June 30, 2008, the Plan had approximately 20 participants and total assets of approximately \$853,000.

2. The Property is an 80,000 square foot parcel of real property located at 1442 Hollow Road, Collegeville, Pennsylvania 19426. On December 30, 1999, the Plan purchased the Property from Fred Olinick, the executor of the estate of Stanley P. Olinick, an unrelated third party, for the purchase price of \$145,000. At that time, the Property included a 1,630 square foot, four-bedroom dwelling in fair to poor condition, which has since been demolished. It is represented that the Property was purchased solely for investment purposes.<sup>11</sup>

The Plan has spent \$106,352 in connection with renovations to the Property since it was acquired by the Plan. The cost of demolishing the dwelling was included in the \$106,352 spent on renovations. The Plan has paid additional holding expenses of approximately \$3,000 per annum in real estate taxes on the Property. The Property has generated no income for the Plan.

The applicant proposes the sale of the Property by the Plan to Mr. Schloer, who serves as the CEO/President of the

Employer and the Plan fiduciary. The Property is adjacent to Mr. Schloer's current residence at 1436 Hollow Road, Collegeville, Pennsylvania 19426. It is represented that neither Mr. Schloer, nor his relatives, nor any other party in interest have used or benefited from the Property.

3. The Property was twice recently appraised by Robin S. Bowers, RM, SRA, a qualified, independent appraiser with The Appraisal Group, located in Lansdale, Pennsylvania. The applicant commissioned the two appraisals valuing the Property with and without the dwelling in order to demonstrate that demolishing the dwelling maximized the value of the Property. Both appraisals were performed after the dwelling was already demolished. In the first appraisal, Ms. Bowers valued the Property by examining comparable properties with no structures or buildings on them. Ms. Bowers determined that the fair market value of the Property as of May 12, 2008 was \$320,000.

For purposes of the second appraisal, Ms. Bowers assumed that the dwelling had not been demolished and was still in existence. Under this assumption, she valued the Property using the Sales Comparison Approach and the Cost Approach. Ms. Bowers compared the Property to six other similar properties having building improvements, based on style, quality, age, and market area. She determined that, as of November 10, 2008, the fair market value of the Property (assuming that the demolished dwelling was still in existence), was \$260,000.

Ms. Bowers also determined that no premium is due to the Plan, as a term of the proposed sale of the Property, for any assemblage value resulting from the adjacency of Mr. Schloer's residence to the Property. The lots are zoned as single dwelling residential lots, and Ms. Bowers opined that, because the best use of the Property was to demolish the dwelling and to erect a new one, no assemblage value would be created even if the Property and the adjacent lot, currently owned by Mr. Schloer, are combined into a single lot.

4. Mr. Schloer proposes to pay the Plan \$381,991 for the Property, calculated as the sum of the following:

(a) \$260,000, the fair market value of the Property as of November 10, 2008 (assuming the absence of renovations), (b) \$106,352, the cost of renovations to the Property paid by the Plan, and (c) \$15,639, for lost earnings attributable to the cost of the renovations, using the Department's online VFCEP (Voluntary Fiduciary Compliance Program) Calculator.

The Property constitutes approximately 37.5% of the total assets of the Plan (based on the May 12, 2008 valuation). The applicant represents that the sale of the Property to Mr. Schloer is in the best interests of the Plan because it will enable the Plan to recoup its initial investment in the Property and the cost of renovations, as well as realize a reasonable gain on its investment. It is intended that the proceeds be re-invested in other investments yielding a higher rate of return. As the Plan fiduciary, Mr. Schloer represents that, in the current real estate market, a sale of the Property on the open market would yield less than the amount that he is willing to pay to the Plan.

5. The applicant represents that the sale of the Property will be a one-time transaction for cash and that the Plan will incur no fees, commissions, or other expenses in connection with the sale. The Employer is bearing the costs of the exemption application and of notifying interested persons.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) The sale will be a one-time transaction for cash;

(b) The terms and conditions of the sale will be at least as favorable to the Plan as those that the Plan could obtain in an arm's length transaction with an unrelated party;

(c) The sales price will be the greater of \$381,991 or the fair market value of the Property as of the date of the transaction, as determined by a qualified, independent appraiser;

(d) The Plan will pay no commissions, costs, or other expenses in connection with the sale; and

(e) The Plan fiduciary will review and approve the methodology used by the qualified, independent appraiser, ensure that such methodology is properly applied in determining the Property's fair market value, and will also determine whether it is prudent to go forward with the proposed transaction.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karin Weng of the Department, telephone (202) 693-8557. (This is not a toll-free number.)

**Morgan Stanley & Co. Incorporated,  
Located in New York, New York**

[Exemption Application Number D-11501]

#### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security

<sup>11</sup> The Department expresses no opinion herein as to whether the acquisition and holding of the Property by the Plan violated any of the provisions of Part 4 of Title I in the Act.

Act of 1974 (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).<sup>12</sup>

#### Section I. Sales of Auction Rate Securities from Plans to Morgan Stanley: Unrelated to a Settlement Agreement

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan (as defined in section V(e)) of an Auction Rate Security (as defined in section V(c)) to Morgan Stanley & Co. Incorporated (Morgan Stanley), where such sale (an Unrelated Sale) is unrelated to, and not made in connection with, a Settlement Agreement (as defined in section V(f)), provided that the conditions set forth in section II have been met.

#### Section II. Conditions Applicable to Transactions Described in Section I

(a) The Plan acquired the Auction Rate Security in connection with brokerage or advisory services provided by Morgan Stanley to the Plan;

(b) The last auction for the Auction Rate Security was unsuccessful;

(c) Except in the case of a Plan sponsored by Morgan Stanley for its own employees (a Morgan Stanley Plan), the Unrelated Sale is made pursuant to a written offer by Morgan Stanley (the Offer) containing all of the material terms of the Unrelated Sale, including, but not limited to: (1) The identity and par value of the Auction Rate Security; (2) the interest or dividend amounts that are due with respect to the Auction Rate Security; and (3) the most recent rate information for the Auction Rate Security (if reliable information is available).

Notwithstanding the foregoing, in the case of a pooled fund maintained or advised by Morgan Stanley, this condition shall be deemed met to the extent each Plan invested in the pooled fund (other than a Morgan Stanley Plan) receives advance written notice regarding the Unrelated Sale, where such notice contains all of the material terms of the Unrelated Sale, including,

but not limited to, the material terms described in the preceding sentence;

(d) The Unrelated Sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security;

(e) The sales price for the Auction Rate Security is equal to the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends;

(f) The Plan does not waive any rights or claims in connection with the Unrelated Sale;

(g) The decision to accept the Offer or retain the Auction Rate Security is made by a Plan fiduciary or Plan participant or IRA owner who is Independent (as defined in section V(d)) of Morgan Stanley. Notwithstanding the foregoing:

(1) In the case of an individual retirement account (an IRA, as described in section V(e) below) which is beneficially owned by an employee, officer, director or partner of Morgan Stanley, the decision to accept the Offer or retain the Auction Rate Security may be made by such employee, officer, director or partner; or (2) in the case of a Morgan Stanley Plan or a pooled fund maintained or advised by Morgan Stanley, the decision to accept the Offer may be made by Morgan Stanley after Morgan Stanley has determined that such purchase is in the best interest of the Morgan Stanley Plan or pooled fund;<sup>13</sup>

(h) Except in the case of a Morgan Stanley Plan or a pooled fund maintained or advised by Morgan Stanley, neither Morgan Stanley nor any affiliate exercises investment discretion or renders investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to the decision to accept the Offer or retain the Auction Rate Security;

(i) The Plan does not pay any commissions or transaction costs with respect to the Unrelated Sale;

(j) The Unrelated Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

<sup>13</sup> The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to sell the Auction Rate Security to Morgan Stanley for the par value of the Auction Rate Security. The Department further emphasizes that it expects Plan fiduciaries, prior to entering into any of the proposed transactions, to fully understand the risks associated with this type of transaction following disclosure by Morgan Stanley of all relevant information.

(k) Morgan Stanley and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Unrelated Sale, such records as are necessary to enable the persons described below in paragraph (l)(i), to determine whether the conditions of this exemption, if granted, have been met, except that—

(i) No party in interest with respect to a Plan which engages in an Unrelated Sale, other than Morgan Stanley and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (l)(i); and

(ii) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Morgan Stanley or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period;

(l)(i) Except as provided below in paragraph (l)(ii), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (k) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission; or

(B) Any fiduciary of any Plan, including any IRA owner, that engages in a Sale, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the Unrelated Sale, or any authorized employee or representative of these entities;

(ii) None of the persons described above in paragraph (l)(i)(B)–(C) shall be authorized to examine trade secrets of Morgan Stanley, or commercial or financial information which is privileged or confidential; and

(iii) Should Morgan Stanley refuse to disclose information on the basis that such information is exempt from disclosure, Morgan Stanley shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

<sup>12</sup> For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

### Section III. Sales of Auction Rate Securities from Plans to Morgan Stanley: Related to a Settlement Agreement

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective August 1, 2008, to the sale by a Plan of an Auction Rate Security to Morgan Stanley, where such sale (a Settlement Sale) is related to, and made in connection with, a Settlement Agreement, provided that the conditions set forth in section IV have been met.

### Section IV. Conditions Applicable to Transactions Described in Section III

(a) The terms and delivery of the Offer are consistent with the requirements set forth in the Settlement Agreement;

(b) The Offer specifically describes, among other things:

(1) How a Plan may determine: The Auction Rate Securities held by the Plan with Morgan Stanley; the number of shares and par value of the Auction Rate Securities; the interest or dividend amounts that are due with respect to the Auction Rate Securities; purchase dates for the Auction Rate Securities; and (if reliable information is available) the most recent rate information for the Auction Rate Securities;

(2) The background of the Offer;

(3) That neither the tender of Auction Rate Securities nor the purchase of any Auction Rate Securities pursuant to the Offer will constitute a waiver of any claim of the tendering Plan;

(4) The methods and timing by which Plans may accept the Offer;

(5) The purchase dates, or the manner of determining the purchase dates, for Auction Rate Securities tendered pursuant to the Offer;

(6) The timing for acceptance by Morgan Stanley of tendered Auction Rate Securities;

(7) The timing of payment for Auction Rate Securities accepted by Morgan Stanley for payment;

(8) The methods and timing by which a Plan may elect to withdraw tendered Auction Rate Securities from the Offer;

(9) The expiration date of the Offer;

(10) The fact that Morgan Stanley may make purchases of Auction Rate Securities outside of the Offer and may otherwise buy, sell, hold or seek to restructure, redeem or otherwise dispose of the Auction Rate Securities;

(11) A description of the risk factors relating to the Offer as Morgan Stanley deems appropriate;

(12) How to obtain additional information concerning the Offer; and

(13) The manner in which information concerning material amendments or changes to the Offer will be communicated to the Plan.

(c) The terms of the Settlement Sale are consistent with the requirements set forth in the Settlement Agreement; and

(d) All of the conditions in section II have been met.

### V. Definitions

For purposes of this exemption:

(a) The term "affiliate" means: any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "control" means: the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term "Auction Rate Security" means a security:

(1) that is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) with an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(d) A person is "Independent" of Morgan Stanley if the person is: (1) not Morgan Stanley or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(e) The term "Plan" means: an individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); an employee benefit plan as defined in section 3(3) of ERISA; or an entity holding plan assets within the meaning of 29 CFR 2510.3-101, as modified by ERISA section 3(42); and

(f) The term "Settlement Agreement" means: a legal settlement involving Morgan Stanley and a U.S. state or federal authority that provides for the purchase of an ARS by Morgan Stanley from a Plan.

### Summary of Facts and Representations

1. The Applicant is Morgan Stanley & Co. Incorporated and its affiliates (hereinafter, either Morgan Stanley or the Applicant). Morgan Stanley is a global financial services firm headquartered in New York, New York. Among other things, Morgan Stanley is both a registered investment advisor subject to the Investment Advisers Act of 1940 and a broker-dealer registered with the U.S. Securities and Exchange Commission. In this last regard, Morgan Stanley acts as a broker and dealer with respect to the purchase and sale of

securities, including Auction Rate Securities.

2. The Applicant describes Auction Rate Securities and the arrangement by which ARS are bought and sold as follows. Auction Rate Securities (or ARS) are securities (issued as debt or preferred stock) with an interest rate or dividend that is reset at periodic intervals pursuant to a process called a Dutch Auction. Investors submit orders to buy, hold, or sell a specific ARS to a broker-dealer selected by the entity that issued the ARS. The broker-dealers, in turn, submit all of these orders to an auction agent. The auction agent's functions include collecting orders from all participating broker-dealers by the auction deadline, determining the amount of securities available for sale, and organizing the bids to determine the winning bid. If there are any buy orders placed into the auction at a specific rate, the auction agent accepts bids with the lowest rate above any applicable minimum rate and then successively higher rates up to the maximum applicable rate, until all sell orders and orders that are treated as sell orders are filled. Bids below any applicable minimum rate or above the applicable maximum rate are rejected. After determining the clearing rate for all of the securities at auction, the auction agent allocates the ARS available for sale to the participating broker-dealers based on the orders they submitted. If there are multiple bids at the clearing rate, the auction agent will allocate securities among the bidders at such rate on a pro-rata basis.

3. The Applicant states that, under a typical Dutch Auction process, Morgan Stanley is permitted, but not obligated, to submit orders in auctions for its own account either as a bidder or a seller and routinely does so in the auction rate securities market in its sole discretion. Morgan Stanley may place one or more bids in an auction for its own account to acquire ARS for its inventory, to prevent: (1) A failed auction (*i.e.*, an event where there are insufficient clearing bids which would result in the auction rate being set at a specified rate, resulting in no ARS being sold through the auction process); or (2) an auction from clearing at a rate that Morgan Stanley believes does not reflect the market for the particular ARS being auctioned.

4. The Applicant states that for many ARS, Morgan Stanley has been appointed by the issuer of the securities to serve as a dealer in the auction and is paid by the issuer for its services. Morgan Stanley is typically appointed to serve as a dealer in the auctions pursuant to an agreement between the

issuer and Morgan Stanley. That agreement provides that Morgan Stanley will receive from the issuer auction dealer fees based on the principal amount of the securities placed through Morgan Stanley.

5. The Applicant states further that Morgan Stanley may share a portion of the auction rate dealer fees it receives from the issuer with other broker-dealers that submit orders through Morgan Stanley, for those orders that Morgan Stanley successfully places in the auctions. Similarly, with respect to ARS for which broker-dealers other than Morgan Stanley act as dealer, such other broker-dealers may share auction dealer fees with Morgan Stanley for orders submitted by Morgan Stanley.

6. According to the Applicant, since February 2008, only a minority of auctions have cleared, particularly involving municipalities. As a result, Plans holding ARS may not have sufficient liquidity to make benefit payments, mandatory payments and withdrawals and expense payments when due.<sup>14</sup>

7. The Applicant represents that, in certain instances, Morgan Stanley may have previously advised or otherwise caused a Plan to acquire and hold an Auction Rate Security.<sup>15</sup> In connection with Morgan Stanley's role in the acquisition and holding of ARS by various Morgan Stanley clients, including the Plans, Morgan Stanley entered into Settlement Agreements with certain U.S. states and federal authorities. Pursuant to these Settlement Agreements, among other things, Morgan Stanley was required to send a written offer to certain Plans that held ARS in connection with the advice and/or brokerage services provided by Morgan Stanley. As described in further detail below, eligible Plans that accepted the Offer were permitted to sell the ARS to Morgan Stanley for cash equal to the par value of such securities, plus any accrued interest and/or dividends. According to the Applicant, as of January 28, 2009, approximately \$227 million dollars in ARS have been sold by Plans to Morgan Stanley in

connection with Offers issued by Morgan Stanley pursuant to a Settlement Agreement. The Applicant states that, prospectively, additional shares of ARS may be tendered by Plans to Morgan Stanley pursuant to an Offer issued by Morgan Stanley pursuant to a Settlement Agreement. Accordingly, the Applicant is requesting retroactive and prospective relief for the Settlement Sales. With respect to Unrelated Sales, the Applicant states that to the best of its knowledge, as of January 28, 2009, no Unrelated Sale has occurred.

However, the Applicant is requesting retroactive relief (and prospective relief) for Unrelated Sales in the event that a sale of Auction Rate Securities by a Plan to Morgan Stanley has occurred outside the Settlement process.

8. The Applicant is requesting relief for the sale of Auction Rate Securities under two different circumstances: (1) where Morgan Stanley initiates the sale by sending to a Plan a written Offer to acquire the ARS (*i.e.*, an Unrelated Sale), notwithstanding that such Offer is not required under a Settlement Agreement; and (2) where Morgan Stanley is required under a Settlement Agreement to send to Plans a written Offer to acquire the ARS (*i.e.*, a Settlement Sale). The Applicant states that the Unrelated Sales and Settlement Sales (hereinafter, either, a Covered Sale) are in the interests of Plans. In this regard, the Applicant states that the Covered Sales would permit Plans to normalize Plan investments. The Applicant represents that each Covered Sale will be for no consideration other than cash payment against prompt delivery of the ARS, and such cash will equal the par value of the ARS, plus any accrued but unpaid interest or dividends. The Applicant represents further that Plans will not pay any commissions or transaction costs with respect to any Covered Sale.

9. The Applicant represents that the proposed exemption is protective of the Plans. The Applicant states that, with very narrowly tailored exceptions: Each Covered Sale will be made pursuant to a written Offer; and the decision to accept the Offer or retain the ARS will be made by a Plan fiduciary or Plan participant or IRA owner who is independent of Morgan Stanley. Additionally, each Offer will be delivered in a manner designed to alert a Plan fiduciary that Morgan Stanley intends to purchase ARS from the Plan. Offers made in connection with an Unrelated Sale will include all of the material terms of the Unrelated Sale, including: The identity and par value of the Auction Rate Security; the interest or dividend amounts that are due with

respect to the Auction Rate Security; and the most recent rate information for the Auction Rate Security (if reliable information is available). Offers made in connection with a Settlement Agreement will specifically include, among other things: The background of the Offer; the method and timing by which a Plan may accept the Offer; the expiration date of the Offer; a description of certain risk factors relating to the Offer; how to obtain additional information concerning the Offer; and the manner in which information concerning material amendments or changes to the Offer will be communicated. The Applicant states that, with very narrowly tailored exceptions, neither Morgan Stanley nor any affiliate will exercise investment discretion or render investment advice with respect to a Plan's decision to accept the Offer or retain the ARS.<sup>16</sup> In the case of a Morgan Stanley Plan or a pooled fund maintained or advised by Morgan Stanley, the decision to engage in a Covered Sale may be made by Morgan Stanley after Morgan Stanley has determined that such purchase is in the best interest of the Morgan Stanley Plan or pooled fund. The Applicant represents further that Plans will not waive any rights or claims in connection with any Covered Sale.

10. The Applicant represents that the proposed exemption, if granted, would be administratively feasible. In this regard, the Applicant notes that each Covered Sale will occur at the par value of the affected ARS, and such value is readily ascertainable. The Applicant represents further that Morgan Stanley will maintain the records necessary to enable the Department and Plan fiduciaries, among others, to determine whether the conditions of this exemption, if granted, have been met.

11. In summary, the Applicant represents that the transactions described herein satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because, among other things:

(a) With only very narrow exceptions, each Covered Sale shall be made pursuant to a written Offer;

(b) Each Covered Sale shall be for no consideration other than cash payment against prompt delivery of the ARS;

(c) The amount of each Covered Sale shall equal the par value of the ARS, plus any accrued but unpaid interest or dividends;

<sup>14</sup> The Department notes that Class Exemption 80-26 (45 FR 28545 (Apr. 29, 1980)), as amended at 71 FR 17917 (Apr. 7, 2006)) permits interest-free loans or other extensions of credit from a party in interest to a plan if, among other things, the proceeds of the loan or extension of credit are used only—(1) for the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract, or (2) for a purpose incidental to the ordinary operation of the plan.

<sup>15</sup> The relief contained in this proposed exemption does not extend to the fiduciary provisions of section 404 of the Act.

<sup>16</sup> The Applicant states that while there may be communication between a Plan and Morgan Stanley subsequent to an Offer, such communication will not involve advice regarding whether the Plan should accept the Offer.

(d) Plans will not waive any rights or claims in connection with any Covered Sale;

(e) With only very narrow exceptions:

(1) The decision to accept an Offer or retain the ARS shall be made by a Plan fiduciary or Plan participant or IRA owner who is Independent of Morgan Stanley; and

(2) Neither Morgan Stanley nor any affiliate shall exercise investment discretion or render investment advice [within the meaning of 29 CFR 2510.3-21(c)] with respect to the decision to accept the Offer or retain the ARS;

(f) Plans shall not pay any commissions or transaction costs with respect to any Covered Sale;

(g) A Covered Sale shall not be part of an arrangement, agreement or understanding designed to benefit a party in interest to the affected Plan;

(h) With respect to any Settlement Sale, the terms and delivery of the Offer, and the terms of Settlement Sale, shall be consistent with the requirements set forth in the Settlement Agreement;

(i) Each Offer made in connection with an Unrelated Sale shall describe all of the material terms of the Unrelated Sale, including:

(1) The identity and par value of the Auction Rate Security;

(2) the interest or dividend amounts that are due with respect to the Auction Rate Security; and

(3) the most recent rate information for the Auction Rate Security (if reliable information is available);

(j) Each Offer made in connection with a Settlement Agreement shall describe all of the material terms of the Settlement Sale, including:

(1) How the Plan can determine: The ARS held by the Plan with Morgan Stanley; the number of shares and par value of the ARS; interest or dividend amounts; purchase dates for the ARS; and (if reliable information is available) the most recent rate information for the ARS;

(2) The background of the Offer;

(3) That neither the tender of ARS nor the purchase of ARS pursuant to the Offer will constitute a waiver of any claim of the tendering Plan;

(4) The methods and timing by which the Plan may accept the Offer; and

(5) The purchase dates, or the manner of determining the purchase dates, for ARS pursuant to the Offer and the timing for acceptance by Morgan Stanley of tendered ARS for payment.

#### Notice To Interested Persons

The Applicant represents that the potentially interested participants and beneficiaries cannot all be identified and therefore the only practical means

of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

#### FOR FURTHER INFORMATION CONTACT:

Chris Motta of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of February 2009.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. E9-3997 Filed 2-24-09; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Notice of a Change in Status of an Extended Benefit (EB) Period for Washington

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces a change in benefit period eligibility under the EB Program for Washington.

The following change has occurred since the publication of the last notice regarding the State's EB status:

- Based on data reported by the Bureau of Labor Statistics on January 27, 2009, Washington's 3-month seasonally adjusted total unemployment rate was 6.6 percent and equals or exceeds 110 percent of the corresponding rate in both prior years. This causes Washington to be triggered "on" to an EB period beginning February 15, 2009.

#### Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

#### FOR FURTHER INFORMATION CONTACT:

Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue NW., Frances Perkins Bldg., Room S-4231, Washington, DC 20210, telephone number (202) 693-3008 (this is not a toll-free number) or by e-mail: [gibbons.scott@dol.gov](mailto:gibbons.scott@dol.gov).

Signed in Washington, DC, this 13th day of February 2009.

**Douglas F. Small,**

*Deputy Assistant Secretary, Employment and Training Administration.*

[FR Doc. E9-3946 Filed 2-24-09; 8:45 am]

**BILLING CODE 4510-FW-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Announcement Regarding States Triggering "On" to the Second-Tier of Emergency Unemployment Compensation 2008 (EUC08)

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** Announcement regarding states triggering "on" to the Second-Tier of Emergency Unemployment Compensation (EUC08).

Public Law 110-449 created a Second-Tier of benefits for qualified unemployed workers claiming benefits in high unemployment states. The Department of Labor produces a trigger notice indicating which states qualify for the Second-Tier of EUC08 benefits and provides the beginning and ending dates of the Second-Tier period for each qualifying state. The trigger notice covering state eligibility for the Second-Tier of the EUC08 program can be found at: [http://ows.doleta.gov/unemploy/claims\\_arch.asp](http://ows.doleta.gov/unemploy/claims_arch.asp). A new trigger notice is posted at this location each week that the program is in effect.

Beginning February 15, 2009, the following states are in a high unemployment period, resulting in their triggering "on" to the Second-Tier of the EUC08 program: Alabama, Maine, Massachusetts, and New York.

#### Information for Claimants

The duration of benefits payable in the EUC program, and the terms and conditions under which they are payable, are governed by Public Laws 110-252 and 110-449, and the operating instructions issued to the states by the U.S. Department of Labor. The State Workforce Agency in states beginning a high unemployment period, will furnish a written notice of potential entitlement to each individual who is potentially eligible for Second-Tier of EUC08 benefits.

Persons who believe they may be entitled to additional benefits under the EUC08 program, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

#### FOR FURTHER INFORMATION CONTACT:

Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg., Room S-4231, Washington, DC 20210, telephone number (202) 693-3008 (this is not a toll-free number) or by e-mail: [gibbons.scott@dol.gov](mailto:gibbons.scott@dol.gov).

Signed in Washington, DC, this 13th day of February 2009.

**Douglas F. Small,**

*Deputy Assistant Secretary, Employment and Training Administration.*

[FR Doc. E9-3945 Filed 2-24-09; 8:45 am]

**BILLING CODE 4510-FW-P**

## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### Notice of Intent To Audit

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Public notice.

**SUMMARY:** The Copyright Royalty Judges are announcing receipt of notices of intent to audit the 2007 and 2008 statements of account submitted by Sirius Satellite Radio Inc. and XM Satellite Radio, Inc.

#### FOR FURTHER INFORMATION CONTACT:

Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707-7658 or e-mail at [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:** Section 106(6) of the Copyright Act, title 17 of the United States Code, gives a copyright owner of sound recordings an exclusive right to perform the copyrighted works publicly by means of a digital audio transmission. This right is limited by section 114(d), which allows certain non-interactive digital audio services, including preexisting satellite digital audio radio services, to make digital transmissions of a sound recording under a compulsory license. Moreover, these services may make any necessary ephemeral reproductions to facilitate the digital transmission of the sound recording under a second license set forth in section 112(e) of the Copyright Act.

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms of the licenses set by the Copyright Royalty Judges ("Judges"). On January 24, 2008, the Judges issued their final determination setting rates and terms for the section 112 and 114 licenses for the period 2007-2012. 73 FR 4080. As part

of the terms set for these licenses, the Judges designated SoundExchange, Inc., as the organization charged with collecting the royalty payments and statements of account and distributing the royalties to the copyright owners and performers entitled to receive such royalties under the section 112 and 114 licenses. 37 CFR 382.13(b)(1). As the designated Collective, SoundExchange may conduct a single audit of a licensee for any calendar year for the purpose of verifying their royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and serve the notice on the licensee to be audited. 37 CFR 382.15(b), (c).

On February 13, 2009, pursuant to 37 CFR 382.15(c), SoundExchange filed with the Judges separate notices of intent to audit Sirius Satellite Radio Inc. and XM Satellite Radio Inc. for the years 2007 and 2008. Section 382.15(c) requires the Judges to publish a notice in the **Federal Register** within 30 days of receipt of the notice announcing the Collective's intent to conduct an audit.

In accordance with 37 CFR 382.15(c), the Copyright Royalty Judges are publishing today's notice to fulfill this requirement with respect to SoundExchange's separate notices of intent to audit Sirius Satellite Radio Inc. and XM Satellite Radio Inc. each filed on February 13, 2009.

Dated: February 20, 2009.

**James Scott Sledge,**

*Chief U.S. Copyright Royalty Judge.*

[FR Doc. E9-3991 Filed 2-24-09; 8:45 am]

**BILLING CODE 1410-72-P**

## NATIONAL SCIENCE FOUNDATION

### National Science Board; Sunshine Act Meetings; Notice (Revised 2/20/09)

The National Science Board, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

**AGENCY HOLDING MEETING:** National Science Board.

**DATE AND TIME:** Monday, February 23, 2009, at 8 a.m.; and Tuesday, February 24, 2009 at 8 a.m.

**PLACE:** National Science Foundation 4201 Wilson Blvd. Room 1235 Arlington, VA 22230. All visitors must report to the NSF visitor desk at the 9th

and N. Stuart Streets entrance to receive a visitor's badge.

**STATUS:** Some portions open, some portions closed

#### Open Sessions:

*February 23, 2009*

8 a.m.–8:05 a.m.  
8:05 a.m.–10:30 a.m.  
10:45 a.m.–12:15 p.m.  
1:15 p.m.–2:15 p.m.

*February 24, 2009*

8 a.m.–9:30 a.m.  
9:30 a.m.–10 a.m.  
10 a.m.–11:30 a.m.  
2 p.m.–3:30 p.m.

#### Closed Sessions:

*February 23, 2009*

2:15 p.m.–4 p.m.  
4:15 p.m.–5:30 p.m.

#### February 24, 2009

11:30 a.m.–12 p.m.  
1:30 p.m.–1:40 p.m.  
1:40 p.m.–2 p.m.

**AGENCY CONTACT:** Dr. Robert E. Webber, [rwebber@nsf.gov](mailto:rwebber@nsf.gov), (703) 292-7000, <http://www.nsf.gov/nsb/>

#### MATTERS TO BE DISCUSSED:

#### Monday, February 23, 2009

*Open Session: 8 a.m.–8:05 a.m.*

- Chairman's Introduction.

#### Committee on Programs and Plans (CPP)

*Open Session: 8:05 a.m.–10:30 a.m.*

- Approval of December 2008 CPP Minutes.
- Committee Chairman's Remarks.
- CPP Subcommittee on Polar Issues (SOPI)
  - SOPI Chairman's Remarks.
  - Director's Report—Office of Polar Programs (OPP).
  - International Polar Year (IPY) Outreach and Education Highlights.
  - Presidential Directive on Arctic Region Policy (NSPD-66/HSPD-25): Promoting International Scientific Cooperation.
- Task Force on Sustainable Energy (SE)
  - Task Force Co-Chairmen's Remarks.
  - Discussion of Task Force Draft Report.
- *NSB Information Item:* Update on iPlant.
- *NSB Information Item:* Update on Planning for Coherent Light Source Development.
- *NSB Information Item:* Track 2D (High Performance Computing System Acquisition: Towards a Petascale Computing Environment for Science and Engineering).

- *Discussion Item:* Review of MREFC Process.
  - NSB Update.
  - NSF Implementation Plan.
  - Discussion and Next Steps

#### Committee on Science and Engineering Indicators (SEI)

*Open Session: 10:45 a.m.–12:15 p.m.*

- Chairman's Remarks.
- *Science and Engineering Indicators 2010* cover.
- Chapter Review Assignments and Responsibilities.
- Plans for the *Indicators* Digest.
- Discussion of Companion Piece Topic.
- New Data for *Science and Engineering Indicators 2012*.
- Chairman's Summary.

#### Committee on Education and Human Resources (CEH)

*Open Session: 1:15 p.m.–2:15 p.m.*

- Approval of December 2008 Minutes.
- Committee Chairman's Remarks.
- Update on the Next Generation of STEM Innovators Workshop.
- Presentations on STEM Learning and Basic Research in Cognitive and Developmental Sciences.

#### Committee on Programs and Plans (CPP)

*Closed Session: 2:15 p.m.–4 p.m.*

- Committee Chairman's Remarks.
- Award Recommendations for Three Science of Learning Centers (SLCs): Introduction & Overview.
  - *NSB Action Item:* Science of Learning Center #1
  - *NSB Action Item:* Science of Learning Center #2
  - *NSB Action Item:* Science of Learning Center #3

#### Committee on Strategy and Budget (CSB)

*Closed Session: 4:15 p.m.–5:30 p.m.*

- NSF Budget Update.
  - NSF Plans for Use of FY 2009 Economic Stimulus Funding.
  - FY 2010 Budget Request Update.

#### Tuesday, February 24, 2009

#### Committee on Strategy and Budget (CSB)

*Open Session: 8 a.m.–9:30 a.m.*

- Approval of CSB Minutes, December 10, 2008.
- Committee Chairman's Remarks.
- CSB Task Force on Cost Sharing (CS)
  - Approval of December 2008 Teleconference Minutes.
  - Task Force Chairman's Remarks.
  - Discussion of Draft Report,

*Investing in the Future: NSF Cost Sharing Policies for a Robust Federal Research Enterprise.*

- Presentation, NSF Implementation of NSB Recommendations on NSF Cost Sharing Policy.
- Discussion of Strategy for Community Engagement.
- CSB Subcommittee on Facilities, Charge.
- NSF Strategic Plan.
  - Status of NSF Strategic Plan Update.
  - NSB Input on Key Issues for Consideration in Developing the Next NSF Strategic Plan.
- NSF Budget Update.
  - FY 2009 Appropriation.

#### Executive Committee

*Open Session: 9:30 a.m.–10 a.m.*

- Approval of Minutes for the December 2008 Meeting.
- Executive Committee Chairman's Remarks.
- Approval of Closed Session Agenda Items memo for May 13–14, 2009 meeting.
- Discussion of Proposed NSB Priority Setting Process.
- Updates or New Business from Committee Members.

#### Committee on Audit and Oversight (A&O)

*Open Session: 10 a.m. -11:30 a.m.*

- Approval of Minutes of the December 9, 2008 Meeting.
- Committee Chairman's Opening Remarks.
- Accountability Under the American Recovery and Reinvestment Act.
- Inspector General Update.
- Chief Financial Officer Update.
- NSB Revisions of Award Delegation Thresholds to NSF.
- FY 2009 Audit Plan.
- Chairman's Closing Remarks.

#### Committee on Audit and Oversight (A&O)

*Closed Session: 11:30 a.m.–12 p.m.*

- OIG FY 2010 Budget.
- Pending Investigations.

#### Plenary Executive Closed

*Closed Session: 1:30 p.m.–1:40 p.m.*

- Approval of December 2008 Minutes.
- Approval of Honorary Awards Recipients.

#### Plenary Closed

*Closed Session: 1:40 p.m.–2 p.m.*

- Approval of December 2008 Minutes.
- Awards and Agreements.
- Closed Committee Reports.

**Plenary Open**

*Open Session: 2 p.m.–3:30 p.m.*

- Approval of December 2008 Minutes.
- Chairman's Report.
- Director's Report.
- Open Committee Reports.

**Ann Ferrante,**

*Writer-Editor.*

[FR Doc. E9–4054 Filed 2–24–09; 8:45 am]

**BILLING CODE 7555–01–P**

**NUCLEAR REGULATORY COMMISSION**

**[Docket No. 72–25; NRC–2009–0076]**

**Foster Wheeler Environmental Corporation; Idaho Spent Fuel Facility; Notice of Docketing and Consideration of Approval of Transfer of Materials License and Conforming Amendment and Opportunity for a Hearing**

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of docketing and consideration of approval of transfer of Special Nuclear Materials License No. 2512, to the Department of Energy, and conforming amendment and opportunity to request a hearing.

**FOR FURTHER INFORMATION CONTACT:**

Shana Helton, Senior Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. Telephone: (301) 492–3284; fax number: (301) 492–3348; e-mail: [shana.helton@nrc.gov](mailto:shana.helton@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 72.50 approving the direct transfer of Special Nuclear Materials (SNM) License No. 2512 for the Idaho Spent Fuel (ISF) Facility independent spent fuel storage installation currently held by Foster Wheeler Environmental Corporation (FWENC). The transfer would be to the Department of Energy (DOE). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by DOE, DOE would become responsible for the construction, operation, and maintenance of the ISF facility following approval of the proposed license transfer.

No physical changes to the ISF facility or operational changes are being

proposed in the application. The proposed amendment would replace references to FWENC in the license and its supporting documentation with references to DOE to reflect the proposed transfer.

Pursuant to 10 CFR 72.50, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the direct transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, and the regulations and orders issued by the Commission.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of an Independent Spent Fuel Storage Installation which does no more than conform the license to reflect the transfer action involves no significant hazards consideration and no genuine issue as to whether the health and safety of the public will be significantly affected. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention via electronic submission through the NRC E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C "Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings," of 10 CFR Part 2. In particular, such requests and petitions

must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139) and codified within the various provisions of Subpart C of 10 CFR Part 2. The E-Filing process requires participants to submit and serve documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its documents through EIE. To be timely,

an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a

balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at [http://ehd.nrc.gov/ehd\\_proceeding/home.asp](http://ehd.nrc.gov/ehd_proceeding/home.asp), unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments are not subject to the E-filing rule and should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this license transfer application, see the application dated May 30, 2008, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. The ADAMS Accession number for the license transfer application is ML081630246. Persons who do not have access to ADAMS or who encounter

problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737 or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

Dated at Rockville, Maryland this 18th day of February 2009.

For the Nuclear Regulatory Commission.

**Shana Helton,**

*Senior Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transport, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E9-4024 Filed 2-24-09; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

### **Sunshine Federal Register Notice**

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission.

**DATES:** Weeks of February 23, March 2, 9, 16, 23, 30, 2009.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and closed.

#### **Week of February 23, 2009**

There are no meetings scheduled for the week of February 23, 2009.

#### **Week of March 2, 2009—Tentative**

*Friday, March 6, 2009*

9:30 a.m. Briefing on Guidance for Implementation of Security Rulemaking (Public Meeting) (Contact: Rich Correia, 301-415-7674).

This meeting will be Webcast live at the Web address—<http://www.nrc.gov>.

1:30 p.m. Briefing on Guidance for Implementation of Security Rulemaking (Closed—Ex. 3).

#### **Week of March 9, 2009—Tentative**

There are no meetings scheduled for the week of March 9, 2009.

#### **Week of March 16, 2009—Tentative**

*Monday, March 16, 2009*

9:30 a.m. Briefing on State of Nuclear Materials and Waste Programs (Public Meeting) (Contact: Tammy Bloomer, 301-415-1725).

This meeting will be Webcast live at the Web address—<http://www.nrc.gov>.

*Tuesday, March 17, 2009*

1:30 p.m. Briefing on State of Nuclear Reactor Safety Programs (Public Meeting) (Contact: Tammy Bloomer, 301-415-1725).

This meeting will be Webcast live at the Web address—<http://www.nrc.gov>.

Friday, March 20, 2009

9:30 a.m. Briefing on the Nuclear Education Program (Public Meeting) (Contact: John Gutteridge, 301-492-2313).

This meeting will be Webcast live at the Web address—<http://www.nrc.gov>.

#### Week of March 23, 2009—Tentative

There are no meetings scheduled for the week of March 23, 2009.

#### Week of March 30, 2009—Tentative

There are no meetings scheduled for the week of March 30, 2009.

\* \* \* \* \*

\*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415-1292. Contact person for more information: Rochelle Baval, (301) 415-1651.

\* \* \* \* \*

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/about-nrc/policy-making/schedule.html>.

\* \* \* \* \*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301-492-2279, TDD: 301-415-2100, or by e-mail at [rohn.brown@nrc.gov](mailto:rohn.brown@nrc.gov). Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

\* \* \* \* \*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to [darlene.wright@nrc.gov](mailto:darlene.wright@nrc.gov).

Dated: February 19, 2009.

**Rochelle C. Baval,**

*Office of the Secretary.*

[FR Doc. E9-4109 Filed 2-23-09; 11:15 am]

BILLING CODE 7590-01-P

## OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206-0219; Form OF 612]

### Proposed Information Collection: Request for Comments on an Existing Information Collection

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the U.S. Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of an existing information collection. This information collection occurs electronically via the “USAJOBS Resume Builder (online application)” or completion and submission via regular mail, e-mail, fax, or in person of *OF 612* “Optional Form Application for Federal Employment” or a resume. The *USAJOBS Resume Builder* and the *OF 612* both reflect the minimal critical elements collected across the Federal Government to assess an applicant's qualifications. The online application on USAJOBS captures the essential information Federal agencies require to evaluate applicants for Federal jobs under the authority of sections 1104, 1302, 3301, 3304, 3320, 3361 3393, and 3394 of Title 5 United States Code.

This notice also announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request to cancel the form, “Optional Form Application for Federal Employment (*OF 612*). The *OF 612* has been used as an optional form to apply for Federal jobs. Applicants for Federal positions may also submit a resume as an alternative. The information contained in the *OF 612* is incorporated in the *USAJOBS Resume Builder* on the USAJOBS Web site. Individual government agencies are responsible for indicating in the job announcement what minimal critical elements would be required in any job seeker's resume. Therefore, the need to maintain the *OF 612* as the only alternative means of applying for Federal positions no longer exists. This action is being taken to facilitate a more seamless employment application process for both Federal agencies and job seekers.

Comments are particularly invited on whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management; and whether it is feasible to discontinue the use of the *OF 612* as

an alternate means of application; whether this information is necessary for the proper performance of functions of OPM, and whether it will have practical utility; whether our estimates of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

We estimate over 50,125,000 applications will be completed annually using the electronic *Resume Builder* in the USAJOBS Web site.

The *OF 612* and the *USAJOBS Resume Builder* take approximately 40 minutes to read and/or complete, depending on the amount of information the applicant wishes to include. The annual estimated burden is 33,082,500 hours.

For copies of this proposal, contact Willie Harrison by phone (202) 606-0106, by E-mail

[Willie.Harrison@opm.gov](mailto:Willie.Harrison@opm.gov) or by fax at (202) 606-1275. Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 60 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to: U.S. Office of Personnel Management, USAJOBS Program Office, ATTN: Willie A. Harrison, U.S. Office of Personnel Management, 1900 E Street, NW., Room 2469J, Washington, DC 20415.

**Howard Weizmann,**

*Deputy Director, U.S. Office of Personnel Management.*

[FR Doc. E9-3996 Filed 2-24-09; 8:45 am]

BILLING CODE 6325-38-P

## POSTAL REGULATORY COMMISSION

[Docket No. MC2009-16; Order No. 183]

### International Priority Mail

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the Postal Service's filing of a notice to expand the availability of Priority Mail International to three additional destination countries. It also discusses related considerations, including additional procedural steps, and invites public comment.

**DATES:** Comments are due February 27, 2009.

**ADDRESSES:** Submit comments electronically via the Commission's

Filing Online system at <http://www.prc.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Stephen L. Sharfman, General Counsel, 202-789-6820 and [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov).

**SUPPLEMENTARY INFORMATION:** On February 13, 2009, the Postal Service filed a notice of classification change which affects the availability of Priority Mail International to three destination countries (Ascension Island, Falkland Islands, and Democratic People's Republic of (North) Korea).<sup>1</sup> Priority Mail International is a competitive product of general applicability.

The Notice was filed pursuant to 39 CFR 3020.90 and 3020.91 governing requests initiated by the Postal Service to change the Mail Classification Schedule. These rules were established to provide a streamlined approach to allow minor corrections, and to keep the Mail Classification Schedule up to date for changes that do not rise to the level of invoking other statutory requirements or Commission rules. Under these rules, review by the Commission is limited. See 39 CFR 3090.93.

In this light, the Postal Service's filing could be interpreted as a minor revision to the Mail Classification Schedule, which merely extends the availability of an existing service at established rates to three additional countries. Because no supporting data are provided, it could also be inferred that the changes have no cost or revenue impact on the underlying product.

On the other hand, the classification changes could be interpreted as establishing new rates for a product to three countries where it previously was not offered. This interpretation views the changes as more than a simple correction to the Mail Classification Schedule, but rather as a change in rates triggering the filing requirements of 39 CFR 3015.<sup>2</sup> In this instance, the Commission finds this interpretation to be more appropriate.<sup>3</sup>

Since this is a case of first impression, the Postal Service will not be required to re-file its Notice under a "CP" designation. However, all future

competitive product classification changes of this nature must be filed as CP dockets pursuant to 39 CFR part 3015.

With respect to the instant filing, the Postal Service is required to provide supplemental information demonstrating that the underlying product continues to meet the requirements of 39 U.S.C. 3633. Furthermore, the Postal Service shall indicate which of the Priority Mail International items (flat rate envelope, flat rate boxes, or parcels) will be available in each of the three identified countries. This information shall be filed by February 24, 2009.

The Commission appoints Paul L. Harrington to serve as Public Representative in this docket.

Interested persons may submit comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015. Comments are due no later than February 27, 2009.

*It is Ordered:*

1. The Commission establishes Docket No. MC2009-16 to consider the Postal Service's Notice concerning expanding the availability of Priority Mail International to three additional destination countries.

2. The Postal Service shall file the supplemental information identified in the body of this Order by February 24, 2009.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. Comments by interested persons in this proceeding are due no later than February 27, 2009.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Steven W. Williams,**

*Secretary.*

[FR Doc. E9-4055 Filed 2-24-09; 8:45 am]

**BILLING CODE 7710-FW-P**

*Extension:*

Regulation AC; OMB Control No. 3235-0575; SEC File No. 270-517.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the existing collection of information provided for in the following rule: Regulation Analyst Certification (AC) (17 CFR 242.500-505).

Regulation AC requires that research reports published, circulated, or provided by a broker or dealer or covered person contain a statement attesting that the views expressed in each research report accurately reflect the analyst's personal views and whether or not the research analyst received or will receive any compensation in connection with the views or recommendations expressed in the research report. Regulation AC also requires broker-dealers to, on a quarterly basis, make, keep, and maintain records of research analyst statements regarding whether the views expressed in public appearances accurately reflected the analyst's personal views, and whether any part of the analyst's compensation is related to the specific recommendations or views expressed in the public appearance. Regulation AC also requires that research prepared by foreign persons be presented to U.S. persons pursuant to Securities Exchange Act Rule 15a-6 and that broker-dealers notify associated persons if they would be covered by the regulation. Regulation AC excludes the news media from its coverage.

The collections of information under Regulation AC are necessary to provide investors with information with which to determine the value of the research available to them. It is important for an investor to know whether an analyst may be biased with respect to securities or issuers that are the subject of a research report. Further, in evaluating a research report, it is reasonable for an investor to want to know about an analyst's compensation. Without the information collection, the purposes of Regulation AC could not be met.

The Commission estimates that Regulation AC imposes an aggregate annual time burden of approximately 28,538 hours on 5,186 respondents, or approximately 5.5 hours per respondent. The Commission estimates that the total annual internal cost of the 28,538 hours is approximately \$10,525,642.00, or approximately \$2,030.00 per respondent, annually.

<sup>1</sup> Notice of the United States Postal Service of Classification Change, February 13, 2009; United States Postal Service Notice of Errata to Notice of Classification Change, February 18, 2009 (together referred to as the Notice).

<sup>2</sup> An analogy can be found in the filing of a shell classification for a competitive international negotiated service agreement product. Adding an additional specific agreement to the shell classification triggers the requirements of 39 CFR part 3015.

<sup>3</sup> The cost and revenue impact may turn out to be minimal in this instance. However, it would be unwise to establish procedural precedent for filings of this nature based on conjecture.

**SECURITIES AND EXCHANGE COMMISSION**

**Submission for OMB Review; Comment Request**

*Upon Written Request, Copies Available From:* U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted within 30 days of this notice.

Dated: February 18, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-4035 Filed 2-24-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, February 26, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The Acting General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in closed session and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Thursday, February 26, 2009 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: February 20, 2009.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9-3993 Filed 2-24-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59417; File No. SR-CBOE-2008-115]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendments No. 1 and 2 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendments No. 1 and 2 Thereto, Relating to FLEX Options Expirations

February 18, 2009.

#### I. Introduction

On November 19, 2008, Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its rules regarding permissible expiration dates for Flexible Exchange Options ("FLEX Options"). On December 15, 2008, the proposed rule change was published for comment in the *Federal Register*.<sup>3</sup> On January 28, 2009, the Exchange filed Amendment No. 1<sup>4</sup> and on February 12, 2009, the Exchange filed Amendment No. 2.<sup>5</sup> The

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 59060 (December 5, 2008), 73 FR 76075 ("Notice").

<sup>4</sup> In Amendment No. 1, the Exchange: (1) Further amended Rules 24A.7, 24A.8, 24B.7 and 24B.8 to clarify the applicable exercise limits for FLEX Options that expire on a third Friday-of-the-month expiration day ("Expiration Friday"); (2) made a typographical correction to the rule text proposed to be added to Rule 24A.7.

<sup>5</sup> In Amendment No. 2, the Exchange (1) further amended Rules 24A.4 and 24B.4 to impose additional restrictions on FLEX Options that expire on any business day that falls on, or within two business days of, an Expiration Friday by specifying that they may only have an a.m. exercise settlement value; (2) made a technical correction to the

Commission received no comments on the proposed rule change. This order provides notice of filing of Amendments No. 1 and 2 to the proposed rule change and grants accelerated approval to the proposed rule change, as modified by Amendments No. 1 and 2.

#### II. Description of the Proposal

Under current CBOE Rules 24A.4 and 24B.4, FLEX Options<sup>6</sup> may not expire on any business day that falls on, or within two business days of, an Expiration Friday.<sup>7</sup>

In this proposed rule change, the Exchange proposed to eliminate the expiration date restriction on FLEX Options expiring on or within two business days of Expiration Friday ("Blackout Period") so that FLEX Options may expire on any business day. Under its proposal, position and exercise limits, as applicable under CBOE Rules, and reporting requirements would continue to apply.<sup>8</sup> The

reference to the Exchange Rules contained in footnote 6 of the original proposed rule change.

<sup>6</sup> FLEX Options (FLEX Index Options and FLEX Equity Options) provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Index Options and FLEX Equity Options are index options and options on specified equity securities, respectively, that are subject to the FLEX rules in Chapters XXIVA or XXIVB of the CBOE Rules. FLEX Index Options Series may be approved and open for trading on any index that has been approved for Non-FLEX Options trading or for warrant trading on the Exchange. FLEX Equity Options transactions are limited to transactions in options on underlying securities that have been approved by the Exchange in accordance with CBOE Rule 5.3, which includes, but is not limited to, stock options and exchange-traded fund options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. See CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.19.

<sup>7</sup> For example, under the current rule, a FLEX Option could expire on the Tuesday before Expiration Friday, but could not expire on the Wednesday or Thursday before Expiration Friday. Similarly, a FLEX Option could expire on the Wednesday after Expiration Friday, but could not expire on the Monday or Tuesday after Expiration Friday. However, subject to certain aggregation requirements for cash settled options, the current FLEX Rules do permit the expiration of FLEX Options on the same day that Non-FLEX quarterly index options ("QIX") and Non-FLEX Weekly Options expire.

<sup>8</sup> FLEX Index Options overlying all industry indexes, all micro narrow-based indexes, and certain broad-based indexes are subject to position and exercise limits under CBOE Rules 24A.7, 24A.8, 24B.7, and 24B.8 and will continue to be under the proposal. FLEX Index Options on certain other broad-based indexes (specifically the BXM, DJX, NDX, OEX, RUT, SPX, VIX, VXD, VXN, XEO, CBOE S&P 500 Three-Month Realized Variance and S&P 500 Three-Month Realized Volatility), and FLEX Equity Options are not subject to position limits but would remain subject to reporting requirements under CBOE Rules 24A.7 and 24B.7.

Continued

Exchange further noted that both the Exchange and its member organizations each have the authority, pursuant to CBOE Rule 12.10, to impose additional margin requirements as deemed advisable.

In addition to the position and exercise limits and reporting requirements described above, for FLEX Options that expire on Expiration Friday, the Exchange proposed to impose an aggregation requirement for position and exercise limit purposes. Specifically, for as long as the options positions remain open, positions in FLEX Options that expire on Expiration Friday would be aggregated with positions in Non-FLEX Options on the same underlying (e.g., the same underlying security in the case of a FLEX Equity Option and the same underlying index in the case of a FLEX Index Option) ("comparable Non-FLEX Options"). Such aggregated FLEX Options and comparable Non-FLEX Options would be subject to the same position and exercise limits that are applicable to the Non-FLEX Options.<sup>9</sup> The aggregation requirement would apply to both cash and physically settled options.

Further, in the case of FLEX Index Options only, FLEX Index Options expiring within the Blackout Period may only have an a.m. exercise settlement value.<sup>10</sup> Currently, FLEX Index Options that expire on any day outside the Blackout Period can have an exercise settlement value determined by reference to one of three values: (i) An a.m. exercise settlement value; (ii) a p.m. exercise settlement value;<sup>11</sup> or (iii) an average index value, provided that it conforms to the averaging parameters, if any, established by the Exchange. Under CBOE's proposal, FLEX Index Options expiring within the Blackout Period could only have an a.m. settlement and would be prohibited from having a p.m.

as is currently the case. Additionally, all FLEX Options remain subject to the position reporting requirements of CBOE Rule 4.13(a).

<sup>9</sup> See proposed CBOE Rules 24A.7(d)(3) and 24B.7(d)(3). The applicable position limits are set forth in Rules 4.11, 24.4, 24.4A, 24.4B, and 29.5. The applicable exercise limits are set forth in Rules 4.12, 24.5, and 29.7. The Commission notes that certain broad-based Index Options traded in CBOE's standardized option market do not have position and exercise limits and this would continue to be the case when they become fungible with FLEX positions. See Rule 24.4 (Position Limits for Broad-Based Index Options).

<sup>10</sup> An opening exercise settlement value ("a.m. settlement") is determined by reference to the reported level of the index as derived from opening prices of the component securities.

<sup>11</sup> A closing exercise settlement value ("p.m. settlement") is determined by reference to the reported level of the index as derived from the closing prices of the component securities. See CBOE Rules 24A.4(b)(3) and 24B.4(b)(3).

settlement or a settlement value based on an average index value.<sup>12</sup>

In conjunction with the elimination of the expiration date restriction, the Exchange also proposed that FLEX Options be permitted in puts and calls that do not have the same exercise style, same expiration date and same exercise price as Non-FLEX Options that are already available for trading on the same underlying security or index, provided the options on an underlying security or index are otherwise eligible for FLEX trading.<sup>13</sup> The proposed rules, however, allow FLEX Options to be traded before (but not after) the options are listed for trading as Non-FLEX Options. Once an outstanding FLEX Option series is listed for trading as a Non-FLEX Option series, (i) all existing open positions established under the FLEX trading procedures would be fully fungible with transactions in the respective Non-FLEX Option series, and (ii) any further trading in the series would be as Non-FLEX options subject to the Non-FLEX trading procedures and rules.<sup>14</sup>

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>15</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>16</sup> in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

The Commission notes that the FLEX Option rules and the Blackout Period were initially proposed by the Exchange in October of 1992 and approved by the Commission in February of 1993.<sup>17</sup> At the time the FLEX rules were first introduced, the Commission was very

concerned about the adverse effects of exercise settlements based on the closing values of the component securities in indexes. Accordingly, while the FLEX Options rules permitted p.m. settlements in certain cases, to address these concerns the Exchange adopted the settlement restrictions described above that prohibited FLEX Options from expiring on, or within, two business days of an Expiration Friday. In approving the first FLEX Options rules, applicable to certain broad-based indexes only, the Commission stated that while it " \* \* \* continues to believe that basing the settlement of index products on opening as opposed to closing prices on Expiration Fridays helps alleviate stock market volatility, \* \* \*" these concerns are reduced in the case of Flex Options, since expiration of these stock options will not correspond to the normal expirations of other options and futures on Expiration Fridays thereby diminishing the impact that FLEX Options could have on the market.<sup>18</sup> Further, in approving the CBOE FLEX market for individual equity options, the Commission further reiterated its concerns and stated that restricting expirations during the Blackout Period would reduce the possibility that expirations of FLEX Equity Options would cause additional pressure on the market for the underlying securities when Non-FLEX Options expire.<sup>19</sup>

As stated by the Exchange in its filing, it no longer believes that the Blackout Period is necessary to insulate Non-FLEX expirations from the potential adverse market impacts of FLEX expirations<sup>20</sup> and that the restriction places the Exchange at a competitive disadvantage to its over-the-counter

<sup>18</sup> In its filing, the Exchange noted that, at the time of its 1992 proposal, the Exchange anticipated that there would be limited secondary trading in any FLEX Option series having a particular expiration date due to the diversity inherent in FLEX Options and that FLEX expiration concentrations should be rare. According to the Exchange, these observations appear to be accurate for the trading in FLEX Options to date and the Exchange anticipates this trend to continue.

<sup>19</sup> See Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996).

<sup>20</sup> The Exchange stated that its experience in trading FLEX Options to date has shown the relatively small percentage of FLEX Options trading compared to overall trading on the Exchange and the lack of market disruptions or problems caused by or on existing FLEX Option expirations. In further support of its proposal, the Exchange noted that it is not aware of any market disruptions or problems caused by customized options in the OTC or futures markets that expire on or near Expiration Friday. Finally, the Exchange has represented that OCC can configure its systems to support the expiration of FLEX Options on any business day.

<sup>12</sup> See Amendment No. 2.

<sup>13</sup> See proposed CBOE Rules 24A.4 and 24B.4, Section 0.2 of Interpretations and Policies.

<sup>14</sup> See proposed CBOE Rules 24A.4 and 24B.4, Section 0.2 of Interpretations and Policies.

<sup>15</sup> In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> See Securities Exchange Act Release Nos. 31361 (October 27, 1992), 57 FR 52655 (November 4, 1992) (SR-CBOE-92-17) (notice of filing of proposed rule change relating to FLEX Options) and 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (Order approving SR-CBOE-92-17).

("OTC") and futures counter-parts in the market for customized options.

The Commission continues to support the use of a.m. settlements in index options to reduce the potential for adverse effects on the underlying component securities. However, the Commission believes the current CBOE's proposal to eliminate the Blackout Period for expiring FLEX Options, including FLEX Index Options, has been appropriately structured by requiring a.m. settlements for FLEX Index Options,<sup>21</sup> requiring, for FLEX Options expiring on Expiration Friday, the aggregation of all position and exercise limits with Non-FLEX Options on the same underlying index or security, requiring fungible FLEX and Non-FLEX Options in the same series to trade only pursuant to Non-FLEX trading rules, and maintaining heightened reporting requirements for large FLEX Options positions. The Commission believes that with these safeguards in place the Exchange's proposal to eliminate the current restrictions on Flex Option expirations on and around Expiration Friday should be approved.

As previously noted by the Commission, the CBOE's FLEX market was created to address the needs of sophisticated portfolio managers and other institutional investors who are increasingly using the OTC market to meet their investment needs. The Commission believes that CBOE's proposal to expand the eligible expiration dates for FLEX Options should give market participants greater flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market.

The Commission believes that the CBOE proposal should help to promote the maintenance of a fair and orderly market consistent with the requirements of Section 6(b)(5) of the Act<sup>22</sup> by extending the benefits of a listed, exchange market to additional FLEX Options. These benefits include, but are not limited to, a centralized market center, an auction market with posted

transparent market quotations and transaction reporting, standardized parameters and procedures for clearance and settlement, and heightened counterparty creditworthiness due to the role of The Options Clearing Corporation ("OCC") as issuer and guarantor of FLEX Options. Moreover, to the extent there may be a risk of adverse market effects attributable to options that would otherwise be traded in a non-transparent fashion in the OTC market, the Commission agrees with CBOE that such risks could be lessened by making these customized options eligible for trading in an exchange environment because of the added transparency, price discovery, and potential liquidity.

Because of the elimination of Blackout Periods surrounding Expiration Fridays, the Commission recognizes that the proposal will result, for the first time, in the possibility that FLEX Options positions may be established in Non-FLEX series. The Commission would be concerned if the FLEX Options could act as a surrogate for trading in standardized options, especially since the standardized options market contains certain protections for investors. This is of particular concern because the Commission recognizes that the FLEX Options market is designed to contain the benefits of an auction market with the features of negotiated transactions, and therefore continuous quotes may not always be available. However, the rules, as proposed by the CBOE, help to ensure that FLEX market participants cannot avoid the protections provided to retail investors in the standardized options market simply by trading FLEX Options. In this regard, once a series is open for trading, new FLEX Options are not permitted in that series. In addition, once a Non-FLEX Options series is open, all outstanding FLEX Options in the same series become fungible with the standardized market, are traded pursuant to standardized market trading rules, and are aggregated for position and exercise limit purposes. These rules help to alleviate these surrogate concerns and should help to ensure that FLEX Options market continues to operate as intended.

Finally, the Commission expects the CBOE to report any undue effects that may occur due to the elimination of the Blackout Period. This includes taking any prompt action should any unanticipated consequences develop.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> for approving the proposal, as modified by Amendments No. 1 and 2,

prior to the thirtieth day after the date of publication of notice of filing of Amendments No. 1 and 2 in the **Federal Register**.<sup>24</sup>

In Amendment No. 1, the Exchange proposed to clarify the applicable exercise limits for FLEX Options that expire on an Expiration Friday. Specifically, the Exchange proposed that such FLEX Options shall be aggregated with positions in comparable Non-FLEX Options and shall be subject to the exercise limits set forth in Rule 4.12 (which pertains to exercise limits for Non-FLEX Equity Options), 24.5 (which pertains to exercise limits for Non-FLEX Index Options), or 29.7 (which pertains to exercise limits for Non-FLEX Credit Options), as applicable. The Commission believes that aggregating FLEX options that expire on a third Friday-of-the-month expiration day with comparable Non-FLEX Options and applying the Non-FLEX Options exercise limits is consistent with the manner in which the Exchange proposed to aggregate and apply position limits for such FLEX Options and comparable Non-FLEX Options and should provide additional safeguards to reduce any risk of adverse market effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations.

In Amendment No. 2, the Exchange proposed to further revise proposed Rules 24A.4 and 24B.4 to include an additional restriction that FLEX Index Options that have expiration dates that fall within the Blackout Period may not have an exercise settlement value based on a specified average. Thus, as revised, the proposed rule would require that FLEX Index Options expiring within the Blackout Period only have an a.m. exercise settlement value.<sup>25</sup>

The limitation on exercise settlement value calculations proposed in Amendment No. 2 is intended to serve as an additional safeguard against potential adverse effects that might be associated with triple witching and p.m.

<sup>21</sup> The Commission notes that in Amendment No. 2 the Exchange modified its proposal to prohibit average pricing formulas as well as p.m. settlements during the Blackout Periods. As CBOE notes, average pricing may not raise similar concerns as p.m. settlement. However, because average pricing settlement is only permitted pursuant to parameters set by the CBOE, and to date it appears that it has not set such parameters (except for SPX), it is appropriate to have CBOE do so before such average pricing settlement is permitted around or on Expiration Friday. We would expect the Exchange to file a proposed rule change pursuant to Section 19(b) under the Act relating to such parameters.

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> Pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

<sup>25</sup> Currently, FLEX Index Options that expire on any day outside the old blackout period can have an exercise settlement value determined by reference to one of three values: (i) An a.m. exercise settlement value; (ii) a p.m. exercise settlement value; or (iii) an average index value, provided that it conforms to the averaging parameters, if any, established by the Exchange. The Exchange originally proposed that FLEX Index Options that have expiration dates that fall within the Blackout Period may not have a p.m. exercise settlement value.

settlements.<sup>26</sup> Because CBOE, for the most part, has not set any average pricing parameters, the Commission is unclear what the potential market impact could be on or around Expiration Friday. Therefore, it is reasonable and consistent with Section 6(b)(5) of the Act<sup>27</sup> for CBOE to restrict average pricing during the Blackout Period until it sets forth a specific proposal and the potential market impact can be adequately addressed.<sup>28</sup>

Based on the above, the Commission finds good cause for approving the CBOE's proposal, as modified by Amendments No. 1 and 2, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

## V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 1 and 2 to File No. SR-CBOE-2008-115, including whether Amendments No. 1 and 2 are consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2008-115 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, and 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2008-115. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2008-115 and should be submitted on or before March 18, 2009.

## VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>29</sup> that the proposed rule change (SR-CBOE-2008-115), as modified by Amendments No. 1 and 2 thereto, be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-4036 Filed 2-24-09; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59410; File No. SR-ISE-2009-06]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

February 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February

11, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on 7 Premium Products.<sup>3</sup> The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the ProShares Ultra DJ-AIG Crude Oil ETF ("UCO"), the ProShares UltraShort DJ-AIG Crude Oil ETF ("SCO"),<sup>4</sup> the ProShares

<sup>3</sup> Premium Products is defined in the Schedule of Fees as the products enumerated therein.

<sup>4</sup> "Dow Jones," AIG<sup>SM</sup>, "The Dow Jones-AIG Crude Oil Sub-Index<sup>SM</sup>" and "DJ-AIGCL<sup>SM</sup>" are service marks of Dow Jones & Company, Inc. and American International Group, Inc. ("American International Group"), as the case may be, and have been licensed for use by ProShares Capital Management. The ProShares UltraShort DJ-AIG Crude Oil ETF ("SCO") and the ProShares Ultra DJ-AIG Crude Oil ETF ("UCO") are based on the Dow Jones-AIG Crude Oil Index<sup>SM</sup> and are not sponsored, endorsed, sold or promoted by Dow Jones, AIG Financial Products Corp. ("AIG-FP"), American International Group, or any of their respective subsidiaries or affiliates. Dow Jones,

<sup>26</sup> The expiration of the contracts for stock index futures, stock index options, and stock options all expire on the same days occurring on the third Friday of March, June, September, and December (which is referred to as "triple witching"). The Exchange's proposed limitations on p.m. exercise settlement values and exercise settlement values based on a specified average would apply during triple witching expirations, as well as on all other Expiration Fridays.

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> See *supra* note 21.

<sup>29</sup> 15 U.S.C. 78s(b)(2).

<sup>30</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

UltraShort MidCap 400 ETF ("MZZ"),<sup>5</sup> the ProShares UltraShort 7–10 Year Treasury ETF ("PST"),<sup>6</sup> the iShares GSCI Commodity Indexed Trust ETF ("GSG"),<sup>7</sup> the ProShares Ultra Gold ETF ("UGL") and the ProShares UltraShort

AIG–FP, and American International Group have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on SCO and UCO or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on SCO and UCO or with making disclosures concerning options on SCO and UCO under any applicable federal or state laws, rules or regulations. Dow Jones, AIG–FP, and American International Group do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

<sup>5</sup> "Standard & Poor's", "S&P", "S&P 400", and "Standard & Poor's 400" are trademarks of The McGraw-Hill Companies, Inc. ("McGraw-Hill") and have been licensed for use for certain purposes by ProShares Trust. All other trademarks and service marks are the property of their respective owners. The ProShares UltraShort MidCap 400 ETF ("MZZ") is not sponsored, endorsed, sold or promoted by Standard & Poor's, ("S&P"), a division of McGraw-Hill. S&P has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on MZZ or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on MZZ or with making disclosures concerning options on MZZ under any applicable federal or state laws, rules or regulations. S&P does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

<sup>6</sup> "Barclays Capital" and "Barclays Capital Inc." are trademarks of Barclays Capital Inc. ("Barclays") and have been licensed for use for certain purposes by ProShares Trust. All other trademarks and service marks are the property of their respective owners. The ProShares UltraShort 7–10 Treasury ETF ("PST") is not sponsored, endorsed, sold or promoted by Barclays. Barclays has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on PST or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on PST or with making disclosures concerning options on PST under any applicable federal or state laws, rules or regulations. Barclays does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

<sup>7</sup> iShares® is a registered trademark of Barclays Global Investors, N.A. ("BGI"), a wholly owned subsidiary of Barclays Bank PLC. "GSCI®" is a registered trademark of Goldman, Sachs & Co. ("Goldman") and has been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. The iShares GSCI Commodity Indexed Trust ("GSG") is not sponsored, sold, endorsed or promoted by Goldman. Goldman and BGI have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on GSG or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on GSG or with making disclosures concerning options on GSG under any applicable federal or state laws, rules or regulations. Goldman and BGI do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

Gold ETF ("GLL"). The Exchange represents that UCO, SCO, MZZ, PST, GSG, UGL and GLL are eligible for options trading because they constitute "Exchange-Traded Fund Shares," as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee for all transactions in options on UCO, SCO, MZZ, PST, GSG, UGL and GLL.<sup>8</sup> The amount of the execution fee for products covered by this filing shall be \$0.18 per contract for all Public Customer Orders<sup>9</sup> and \$0.20 per contract for all Firm Proprietary orders. The amount of the execution fee for all ISE Market Maker transactions shall be equal to the execution fee currently charged by the Exchange for ISE Market Maker transactions in equity options.<sup>10</sup> Finally, the amount of the execution fee for all non-ISE Market Maker transactions shall be \$0.45 per contract.<sup>11</sup> Further, since options on UCO, SCO, MZZ, PST, GSG, UGL and GLL are multiply-listed, the Exchange's Payment for Order Flow fee shall apply to all these products. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>12</sup> in general, and furthers the objectives of

<sup>8</sup> These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2009, these fees will also be charged to Linkage Principal Orders ("Linkage P Orders") and Linkage Principal Acting as Agent Orders ("Linkage P/A Orders"). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is \$0.24 [sic] per contract side and \$0.15 [sic] per contract side, respectively. See Securities Exchange Act Release No. 58143 (July 11, 2008), 73 FR 41388 (July 18, 2008) (SR–ISE–2008–52). The Commission notes that the Exchange failed to accurately reflect the increased execution fees for linkage orders, which are now \$0.27 for Linkage P orders and \$0.18 for Linkage P/A orders. See Securities Exchange Act Release No. 58139 (July 10, 2008), 73 FR 41142 (July 17, 2008) (SR–ISE–2008–54).

<sup>9</sup> Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person or entity that is not a broker or dealer in securities.

<sup>10</sup> The Exchange applies a sliding scale, between \$0.01 and \$0.18 per contract side, based on the number of contracts an ISE market maker trades in a month.

<sup>11</sup> The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is \$0.19 per contract.

<sup>12</sup> 15 U.S.C. 78f.

Section 6(b)(4),<sup>13</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

## B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act<sup>14</sup> and Rule 19b–4(f)(2)<sup>15</sup> thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR–ISE–2009–06 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISE–2009–06. This file number

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b–4(f)(2).

should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-ISE-2009-06 and should be submitted on or before March 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-3979 Filed 2-24-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59419; File No. SR-BX-2009-011]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate the \$3 Underlying Price Requirement for Continued Listing and Listing of Additional Series on the Boston Options Exchange Facility

February 19, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 18, 2009, NASDAQ OMX BX, Inc. (the

"Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter IV, Section 4 (Withdrawal of Approval of Underlying Securities) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to eliminate the \$3 market price per share requirement from the requirements for continued approval of an underlying security and the prohibition against listing additional series of options on an underlying security at any time when the price per share of such underlying security is less than \$3. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this proposed rule change is to eliminate the \$3 market price per share requirement from the requirements for continued approval for an underlying security from Chapter IV,

Section 4(b)(iv) of the BOX Rules. This proposed rule change also amends Chapter IV, Section 4(c) by eliminating the prohibition against listing additional series or options on an underlying security at any time when the price per share of such underlying security is less than \$3. The Exchange also proposes to make technical changes throughout Section 4 to eliminate references to Section 4(b)(iv).

The BOX rules require that the market price for a security be at least \$3 on the previous trading day for the continued listing of options on that underlying security. If the price of an underlying security falls below \$3, BOX can continue to trade then-listed series on that underlying security, but is unable to list new series of options. The Exchange believes that the \$3 market price per share requirement is no longer necessary or appropriate, and that only those underlying securities meeting the remaining continued listing criteria set forth in Chapter IV, Section 4 will be eligible for continued listing and the listing of additional options series. The Exchange believes that the current \$3 market price per share requirement could have a negative effect on investors. For example, in the current volatile market environment in which the market price for a large number of securities has fallen below \$3, BOX is currently unable to list new series on underlying securities trading below \$3. If there is market demand for series below \$3, BOX would be unable to accommodate such requests and investors would be unable to hedge their positions with options series with strikes below \$3.

###### 2. Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>5</sup> in general, and Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change will permit BOX to make options on underlying securities available even if the price of the underlying security is less than \$3,

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

thus providing investors additional opportunities to hedge their positions.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>9</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>10</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay. The Commission notes that this proposed rule change is substantially identical to a proposed rule change that was approved by the Commission after an opportunity for public comment,<sup>11</sup> and does not raise any new substantive issues. The Exchange requests the waiver of the 30-day operative delay so that the proposed rule change may become effective and

operative immediately and allow BOX to remain competitive with other exchanges. For these reasons, the Commission believes that waiving the 30-day operative delay<sup>12</sup> is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2009-011 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2009-011. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-BX-2009-011 and should be submitted on or before March 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-3978 Filed 2-24-09; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59420; File No. SR-NASDAQ-2009-011]

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Exchange Direct Order for the NASDAQ Options Market**

February 19, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 17, 2009, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq has filed this proposal pursuant to Exchange Act Rule 19b-4(f)(6)<sup>3</sup> and has provided the Commission with the notice required by Rule 19b-4(f)(6)(iii).<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq proposes to establish a new order type for the NASDAQ Options

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> *Id.*

<sup>11</sup> The Exchange's proposed rule change is substantially identical to a proposed rule change by the Chicago Board Options Exchange ("CBOE") recently approved by the Commission. See Securities Exchange Act Release No. 59336 (February 2, 2009), 74 FR 6332 (February 6, 2009) (SR-CBOE-2008-127).

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Market (“NOM”) that will allow users to direct orders to be delivered by the system to another exchange without first checking the NOM book.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.<sup>5</sup>

## Options Rules

### Chapter VI Trading System

\* \* \* \* \*

#### Sec. 1 Definitions

(a)–(d) No change.

(e) The term “Order Type” shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(6) No change.

(7) “Exchange Direct Orders” are orders that are directed to an exchange other than NOM as directed by the entering party without checking the NOM book. If unexecuted, the order (or unexecuted portion thereof) shall be returned to the entering party. This order type may only be used for orders with time-in-force parameters of IOC.

*Directed Orders may not be directed to a facility of an exchange that is an affiliate of Nasdaq.*

\* \* \* \* \*

#### Sec. 6 Acceptance of Quotes and Orders

All bids or offers made and accepted on NOM in accordance with the NOM Rules shall constitute binding contracts, subject to applicable requirements of the Rules of the Exchange and the Rules of the Clearing Corporation.

(a) General—A System order is an order that is entered into the System for display and/or execution as appropriate. Such orders are executable against marketable contra-side orders in the System.

(1) All System Orders shall indicate limit price and whether they are a call or put and buy or sell. Systems Orders can be designated as Immediate or Cancel (“IOC”), Good-till-Cancelled (“GTC”), Day (“DAY”), or Expire Time (“EXPR”).

(2) A System order may also be designated as a Reserve Order, a Limit Order, a Minimum Quantity Order, a Discretionary Order, a Market Order, [or] a Price Improving Order, *or an Exchange Direct Order.*

(b) No change.

\* \* \* \* \*

<sup>5</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaq.cchwallstreet.com>.

## II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

Nasdaq proposes to implement a new order type—the Exchange Direct Order—that is well-established for equities trading but will now be available for use by Options Participants.<sup>6</sup> Exchange Direct Orders will be entered by an Options Participant and sent to an options market other than NOM without first checking the NOM book. Upon entry, the Options Participant will select the options market to receive the order. If unexecuted, the order (or unexecuted portion thereof) shall be returned to the entering party. The Exchange Direct Order will be available only for orders with time-in-force parameters of Immediate Or Cancel (IOC).

The Exchange Direct Order type is similar to the “Directed Order” in use by Nasdaq for cash equities trading which permits members of Nasdaq to route orders directly to other equity markets without first checking the Nasdaq book.<sup>7</sup> Similar to the processing of Directed Orders for equities trading, when NOM’s execution system receives an Exchange Direct Order, NOM’s system will pass that order to NASDAQ Options Services, LLC, the Nasdaq facility providing routing for NOM. NASDAQ Options Services has connectivity to route to all of the other options markets. NASDAQ Option Services will accept orders only from NOM, which in turn accepts orders only from Nasdaq members.

This order will provide additional flexibility and functionality to Options Participants and promote market

efficiency by providing them the ability to better control their access to other options markets. In addition, the order may promote the entry of new participants to the options markets by facilitating access to multiple markets. Exchange Direct Orders will enhance the value of a connection to NOM for Nasdaq members who are Options Participants and at times want to access liquidity at the National Best Bid and Offer (NBBO) but do not have connections to all other options markets. These participants will be able to control the liquidity they access, the sequence in which the liquidity is accessed and the manner in which they access the liquidity.

Options Participants that enter Exchange Direct Orders on NOM will be subject to applicable routing fees. However, at this time Options Participants will not be charged a separate fee for using this order designation.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change would provide additional functionality to Nasdaq members using NOM and promote the entry of new participants to the options markets by facilitating access to multiple markets. The Commission has already determined that this functionality is consistent with the Act for use in equities trading.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> Pursuant to Chapter I, Section 1(a)(40) of the NOM Rules, the term “Options Participant” means a firm, or organization that is registered with Nasdaq for purposes of participating in options trading on NOM as a “Nasdaq Options Order Entry Firm” or “Nasdaq Options Market Maker”.

<sup>7</sup> See Nasdaq Equities Rule 4751(f)(9).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder in that it effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

In its recent guidance on the proposed rules of Self-Regulatory Organizations ("SROs"),<sup>12</sup> the Commission concluded that filings based on the rules of another SRO already approved by the Commission are eligible for immediate effectiveness under Rule 19b-4(f)(6). The Commission noted that "a proposed rule change appropriately may be filed as an immediately effective rule so long as it is based on and similar to another SRO's rule and each policy issue raised by the proposed rule (i) has been considered previously by the Commission when the Commission approved another exchange's rule (that was subject to notice and comment), and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval."<sup>13</sup> Nasdaq believes that the proposed rule change is "based on and similar to" existing order types in use for cash equities trading, including Equities Rule 4751(f)(9) of Nasdaq ("Directed Order"), Equities Rule 7.31(x)(iii) of NYSE Arca ("PO+ Order") and Rule 11.9(c)(11) of BATS ("Modified Destination Specific Order"). The proposed Exchange Direct Order for NOM is based on the same functionality currently in use and is intended to operate in a manner similar to these existing order types.

This rule proposal, which is effective upon filing with the Commission, shall become operative 30 days after the date of the filing.

At any time within 60 days of the filing of the proposed rule change, the

Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2009-011 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2009-011. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2009-011 and

should be submitted on or before March 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59421; File No. SR-NASDAQ-2009-005]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 Thereto To Reduce Certain Order Exposure Periods on the NASDAQ Options Market From Three Seconds to One Second**

February 19, 2009.

**I. Introduction**

On January 23, 2009, The NASDAQ Stock Market LLC ("NASDAQ"), filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to reduce certain order exposure periods on the NASDAQ Options Market ("NOM") from three seconds to one second. NASDAQ filed Amendment 1 to the proposed rule change on January 27, 2009. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on February 3, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

**II. Description of the Proposal**

The purpose of the proposed rule change is to reduce the exposure time during which Options Participants<sup>4</sup> may not execute as principal against orders they represent as agent from three seconds to one second. Specifically, NASDAQ proposes to

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 59310 (January 28, 2009), 74 FR 5952.

<sup>4</sup> Pursuant to Chapter I, Section 1(a)(40) of the NOM Rules, the term "Options Participant" means a firm, or organization that is registered with the Exchange for purposes of participating in options trading on NOM as a "Nasdaq Options Order Entry Firm" or "Nasdaq Options Market Maker".

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008).

<sup>13</sup> *Id.* at 40149.

amend Chapter VII, Section 12, which currently provides that an Options Participant may not execute as principal against orders on the limit order book they represent as agent unless: (a) Agency orders are first exposed on NOM for at least three seconds, or (b) the Options Participant has been bidding or offering on NOM for at least three seconds prior to receiving an agency order that is executable against such bid or offer. In addition, Options Participants must expose orders they represent as agent for at least three seconds before such orders may be automatically executed, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders. Under the proposal, these exposure periods would be reduced to one second.

### III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.)<sup>5</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,<sup>7</sup> which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that, given the electronic environment of NASDAQ, reducing each of these exposure periods from three seconds to one second could facilitate the prompt execution of orders, while continuing to provide market participants with an opportunity to compete for exposed bids and offers. To substantiate that NASDAQ members could receive, process, and

communicate a response back to NASDAQ within one second, NASDAQ stated that it distributed a survey to all NOM Options Participants. NASDAQ stated that the survey results indicated that it typically takes not more than 250 milliseconds for members to receive, process, and respond to broadcast messages that would be affected by the proposal. NASDAQ also stated that all eight members that responded to the survey indicated that reducing the exposure period to one second would not impair their ability to participate in orders affected by the proposal. Based on NASDAQ's statements regarding the survey results, the Commission believes that market participants should continue to have opportunities to compete for exposed bids and offers within a one second exposure period. Accordingly, the Commission believes that it is consistent with the Act for NASDAQ to reduce the order handling and exposure times discussed herein from three seconds to one second.

The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after publication for comment in the **Federal Register**. The Commission notes that the proposed rule change was noticed for a fifteen-day comment period, and no comments were received. The Commission believes that NASDAQ has provided reasonable support for its belief that its market participants would continue to have an opportunity to compete for exposed bids and offers if the exposure periods were reduced to one second as proposed. Finally, the Commission also notes that the proposed rule change is similar to recently approved proposals submitted by the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC, and NASDAQ OMX PHLX, Inc.<sup>8</sup> Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>9</sup> to approve the proposed rule change on an accelerated basis.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-NASDAQ-2009-005), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

<sup>8</sup> See Securities Exchange Act Release Nos. 58088 (July 2, 2008), 73 FR 39747 (July 10, 2008) (SR-CBOE-2008-16); 58224 (July 25, 2008), 73 FR 44303 (July 30, 2008) (SR-ISE-2007-94); and 59081 (December 11, 2008), 73 FR 76432 (December 16, 2008).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-4038 Filed 2-24-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59415; File No. SR-NYSE-2009-13]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending Certain NYSE Rules To Reflect That Designated Market Makers on the Exchange No Longer Act as Agents for Orders Entered on the Exchange

February 18, 2009.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") <sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 4, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain NYSE rules to reflect that Designated Market Makers ("DMMs") on the Exchange will no longer act as agents for orders entered on the Exchange.

The text of the proposed rule change is available at <http://www.nyse.com>, the Exchange, and the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(b)(8).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Through this filing, the Exchange proposes to amend certain NYSE rules to reflect that the Designated Market Makers ("DMMs") no longer have agency responsibilities for orders entered on the NYSE Display Book® ("Display Book").<sup>4</sup>

The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE Alternext Exchange (formerly the American Stock Exchange).<sup>5</sup>

Background

On June 12, 2008, the NYSE filed a set of proposed rule changes designed to transform its market structure and reinforce the NYSE as the premier venue for price discovery, liquidity, competitive quotes and price improvement.<sup>6</sup> That and other filings<sup>7</sup> formed the core initiatives submitted by the Exchange to reinforce its dynamic and competitive marketplace.

As outlined in SR-NYSE-2008-46 (the "New Market Model filing"), the changes to the Exchange's marketplace included the replacement of Exchange specialists with DMMs. The function of the DMM is substantially different from the manner in which specialists functioned vis-à-vis the relationship between Exchange order givers and representation of these orders in the marketplace. DMMs no longer receive copies of orders entered in Exchange systems prior to the orders publication to all market participants by Display

Book. Similarly, DMMs do not have a negative obligation which would require the DMM to yield trading for the DMM unit's proprietary account in order to allow public orders to be executed against each other. DMMs therefore trade on parity with all market participants.

Incoming orders to buy and sell submitted to the Exchange are eligible for automatic quoting and immediate and automatic execution. Instead of the DMM, the NYSE Display Book is responsible for tracking the liquidity available at each specified price point. NYSE systems automatically review the liquidity available on the Display Book for execution and then using sophisticated execution logic access the necessary liquidity to consummate trades. Exchange systems report executions to the entering parties, update the quote and process order cancellations.

Although the DMM no longer receives order by order information, he or she is still responsible for the execution of manual transactions on the Exchange including opening and re-opening transactions, closing transactions, block transactions, gap quote situations and when trading reaches LRP that would lock or cross the market.<sup>8</sup> DMMs are responsible for choosing the price<sup>9</sup> and the executions of the orders at that price during those specific situations.

In the current NYSE trading environment, the DMM no longer functions as an agent for orders on the Display Book because the DMM does not control order by order information. As such the Exchange proposes through this filing to amend legacy rules that retain the concept of the Exchange market maker as agent.

Proposed Rule Changes

Certain Exchange rules contain language that refers to the DMM "holding," "receiving," and/or "accepting" orders. These concepts were consistent with the role performed by former specialist but are inconsistent with the role of the DMM. The Exchange therefore proposes to amend NYSE Rules 13 ("Definitions of Orders"), 91

("Taking or Supplying Securities Named in Order"), 123A ("Miscellaneous Requirements") and 123B ("Exchange Automated Order Routing Systems") to remove this concept.

Specifically, the Exchange proposes to delete the Supplementary Material.10 of NYSE Rule 13 in its entirety to remove language that provides a DMM must accept any order given to him, unless he obtains Floor Official approval to decline an order. The Exchange further seeks to remove the phrase "the DMM via"<sup>10</sup> from Supplementary Material.40 of NYSE Rule 91 that governs a DMM making a proprietary trade against an order, but retain the procedural provisions. In Supplementary Material to Rule 123A, the Exchange proposes to delete .10 ("Limited orders-Market orders") since it speaks to a member giving an order to the DMM. The first paragraph of .20 ("Sending orders to DMMs") in that rule is proposed for deletion as it governs members and member organizations transmitting orders to DMMs. The Exchange further proposes to amend .20 of NYSE Rule 123A to: (i) Delete the concept of orders being sent to the DMMs; and (ii) change the title to "Changes in Day Orders" which reflects the retained material. Similarly, Supplementary Material .31 ("Orders sent to representatives"), .32 ("Report not received"), .33 ("Addressed order or order handed to DMM"), .34 ("Unaddressed order"), .35 ("Erroneous statement"), .36 ("Legibility of orders"), .37 ("Identity of stock"), .38 ("Reports, written and oral") and .39 ("Duplicate reports") of NYSE Rule 123A are proposed for deletion as they speak to transmitting or giving orders to DMMs, DMMs receiving orders, DMMs giving reports on orders, and similar provisions.

In addition, the Exchange proposes to delete NYSE Rule 123B(b)(2)(B) because it speaks of orders received by the DMM through the Designated Order Turnaround System and to erroneous reports sent by the DMM on executions. These functions are no longer handled in this manner. As previously explained, order acceptance and reports of executions are handled by Exchange systems. The Exchange also proposes to delete NYSE Rule 123B(d) because it describes orders being sent to and executed by the DMM.

The Exchange also proposes to amend paragraph (2)(A) of Rule 123B(b) to have it apply to all members if the member

<sup>4</sup> The Display Book® system is an order management and execution facility. The Display Book system receives and displays orders to the DMM, contains the Book, and provides a mechanism to execute and report transactions and publish results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

<sup>5</sup> See SR-NYSE Alternext-2009-09 (to be filed February 4, 2009).

<sup>6</sup> See Securities Exchange Act Release No. 58184 (July 17, 2008), 73 FR 42853 (July 23, 2008) (SR-NYSE-2008-46).

<sup>7</sup> See for example, Securities Exchange Act Release No. 58052 (June 27, 2008), 73 FR 38274 (July 3, 2008) (SR-NYSE-2008-45) (amending NYSE Rule 98); see also Securities Exchange Act Release No. 58363 (August 14, 2008), 73 FR 49514 (August 21, 2008) (SR-NYSE-2008-52) (amending the NYSE allocation policy).

<sup>8</sup> See NYSE Rule 104(a)(2)-(5).

<sup>9</sup> In an opening and reopening trade, Display Book will verify that all interest that must be executed in the opening or reopening can be executed at the price chosen by the DMM. If all the interest that must be executed in the transaction cannot be executed at that price, the Display Book will block the execution. In addition, when executing blocks (10,000 shares or more or value of \$200,000 or more), trading out of a gap quote situation or an LRP that locks or crossed the market, the Display Book may adjust the execution price if there is enough interest on the Display Book to complete the transaction at a better price.

<sup>10</sup> See e-mail from Deanna G. W. Logan, Managing Director, NYSE Regulation, Inc., to David Liu, Assistant Director, Division of Trading and Markets, Commission, dated February 13, 2009 (making technical edits) ("February 13th e-mail").

makes an erroneous report of the price of a transaction, by substituting the word "member" for the word "broker" in the rule. This will then include situations in which a DMM makes an erroneous report as to price on a transaction.

NYSE Rule 92(d)(6) ("Limitations on Members' Trading Because of Customers' Orders") is further proposed for deletion as it restricts DMM proprietary trading during the hours the Exchange is closed. The restriction was predicated on the former specialist system where the specialist had knowledge of customer orders in his or her possession. The restriction is obviated by the fact that the DMM no longer "holds" customer orders. Nevertheless, as members, DMMs will continue to be subject to the rule's general prohibition. Similarly, the last sentence of NYSE Rule 127(d)(3) ("Block Crosses Outside the Prevailing NYSE Quotation") is proposed for deletion because it also is predicated on the DMM retaining stock for the DMM's own account at a price at which the DMM "holds" unexecuted customer orders.<sup>11</sup>

The Exchange believes that the amendments proposed herein to remove legacy rule language that is inconsistent with the role of the DMM as approved by the Commission in the New Market Model filing are necessary to adequately reflect the functions performed by the DMM.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>13</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed rule changes are consistent with these principles in that it amends legacy rules to accurately reflect the role performed by the Exchange's market maker thus removing impediments to and perfecting the mechanism of a free and open market.

## B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.<sup>16</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change seeks to remove legacy language that is inconsistent with the role performed by DMMs as approved by the Commission in the New Market Model filing.<sup>17</sup> Furthermore, it seeks to clarify its rule text in order to avoid any undue confusion on the part of Exchange

market participants as it relates to the function performed by DMMs. Therefore, the Commission designates the proposal operative upon filing.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>19</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2009-13 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

<sup>17</sup> See *supra* note 6.

<sup>18</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>19</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>11</sup> See February 13th e-mail, *supra*, note 10.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2009-13 and should be submitted on or before March 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-3980 Filed 2-24-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59416; File No. SR-NYSEALTR-2009-09]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext US LLC Amending Certain NYSE Alternext Equities Rules To Reflect That Designated Market Makers ("DMMs") on the Exchange No Longer Act as Agents for Orders Entered on the Exchange

February 18, 2009.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") <sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 4, 2009, NYSE Alternext US LLC (the "Exchange" or "NYSE Alternext") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain NYSE Alternext Equities rules to reflect that Designated Market Makers ("DMMs") on the Exchange will no longer act as agents for orders entered on the Exchange.

The text of the proposed rule change is available at <http://www.nyse.com>, the

Exchange, and the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Through this filing, the Exchange proposes to amend certain NYSE Alternext Equities rules to conform them with amendments filed by the New York Stock Exchange, Inc. [sic] LLC <sup>4</sup> to reflect that the Designated Market Makers ("DMMs") no longer have agency responsibilities for orders entered on the Display Book® ("Display Book").<sup>5</sup>

As described more fully in a related rule filing,<sup>6</sup> NYSE Euronext acquired The Amex Membership Corporation ("AMC") pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the "Merger"). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC ("Amex"), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC, and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "Act").<sup>7</sup> The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange

relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the "Equities Relocation"). The Exchange's equity trading systems and facilities at 11 Wall Street (the "NYSE Alternext Trading Systems") are operated by the NYSE on behalf of the Exchange.<sup>8</sup>

As part of the Equities Relocation, NYSE Alternext adopted NYSE Rules 1-1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Alternext Equities Rules to govern trading on the NYSE Alternext Trading Systems.<sup>9</sup> The NYSE Alternext Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1-1004 and the Exchange continues to update the NYSE Alternext Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

###### Background

On June 12, 2008, the NYSE filed a set of proposed rule changes designed to transform its market structure and reinforce the NYSE as the premier venue for price discovery, liquidity, competitive quotes and price improvement.<sup>10</sup> That and other filings <sup>11</sup> formed the core initiatives submitted by the NYSE to reinforce its dynamic and competitive marketplace.

As outlined in SR-NYSE-2008-46 (the "New Market Model filing"), the changes to the NYSE's marketplace

<sup>8</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation).

<sup>9</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR-NYSE-2008-106) and Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR-NYSEALTR-2008-03) (together, approving the Bonds Relocation); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR-NYSEALTR-2008-10) (adopting amendments to NYSE Alternext Equities Rules to track changes to corresponding NYSE Rules); Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR-NYSEALTR-2008-11) (adopting amendments to Rule 62-NYSE Alternext Equities to track changes to corresponding NYSE Rule 62).

<sup>10</sup> See Securities Exchange Act Release No. 58184 (July 17, 2008), 73 FR 42853 (July 23, 2008) (SR-NYSE-2008-46).

<sup>11</sup> See for example, Securities Exchange Act Release No. 58052 (June 27, 2008), 73 FR 38274 (July 3, 2008) (SR-NYSE-2008-45) (amending NYSE Rule 98); see also Securities Exchange Act Release No. 58363 (August 14, 2008), 73 FR 49514 (August 21, 2008) (SR-NYSE-2008-52) (amending the NYSE allocation policy).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See SR-NYSE-2009-13 (to be filed on February 4, 2009).

<sup>5</sup> The Display Book® system is an order management and execution facility. The Display Book system receives and displays orders to the DMM, contains the Book, and provides a mechanism to execute and report transactions and publish results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

<sup>6</sup> See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex 2008-62) (approving the Merger).

<sup>7</sup> 15 U.S.C. 78f.

included the replacement of NYSE specialists with DMMs. These changes are also applicable to the NYSE Alternext market. The function of the DMM is substantially different from the manner in which Exchange specialists functioned vis-à-vis the relationship between order givers and representation of these orders in the marketplace. DMMs no longer receive copies of orders entered in Exchange systems prior to the order's publication to all market participants by Display Book. Similarly, DMMs do not have a negative obligation which would require the DMM to yield trading for the DMM unit's proprietary account in order to allow public orders to be executed against each other. DMMs therefore trade on parity with all market participants.

Incoming orders to buy and sell submitted to the Exchange are eligible for automatic quoting and immediate and automatic execution. Instead of the DMM, the Display Book is responsible for tracking the liquidity available at each specified price point. Exchange systems automatically review the liquidity available on the Display Book for execution and then using sophisticated execution logic access the necessary liquidity to consummate trades. Exchange systems report executions to the entering parties, update the quote and process order cancellations.

Although the DMM no longer receives order by order information, he or she is still responsible for the execution of manual transactions on the Exchange including opening and re-opening transactions, closing transactions, block transactions, gap quote situations and when trading reaches LRPs that would lock or cross the market.<sup>12</sup> DMMs are responsible for choosing the price<sup>13</sup> and the executions of the orders at that price during those specific situations.

In the current Exchange trading environment, the DMM no longer functions as an agent for orders on the Display Book because the DMM does not control order by order information. As such the Exchange proposes through this filing to amend legacy rules that

retain the concept of the Exchange market maker as agent.

#### Proposed Rule Changes

Certain Exchange rules contain language that refers to the DMM "holding," "receiving," and/or "accepting" orders. These concepts were consistent with the role performed by former specialist but are inconsistent with the role of the DMM. The Exchange therefore proposes to amend NYSE Alternext Rules 13 ("Definitions of Orders"), 91 ("Taking or Supplying Securities Named in Order"), 123A ("Miscellaneous Requirements") and 123B ("Exchange Automated Order Routing Systems") to remove this concept.

Specifically, the Exchange proposes to delete the Supplementary Material .10 of NYSE Alternext Rule 13 in its entirety to remove language that provides a DMM must accept any order given to him, unless he obtains Floor Official approval to decline an order. The Exchange further seeks to remove the phrase "the DMM via" <sup>14</sup> from Supplementary Material .40 of NYSE Alternext Rule 91 that governs a DMM making a proprietary trade against an order, but retain the procedural provisions. In Supplementary Material to Rule 123A, the Exchange proposes to delete .10 ("Limited orders-Market orders") since it speaks to a member giving an order to the DMM. The first paragraph of .20 ("Sending orders to DMMs") in that rule is proposed for deletion as it governs members and member organizations transmitting orders to DMMs. The Exchange further proposes to amend .20 of NYSE Alternext Rule 123A to: (i) Delete the concept of orders being sent to the DMMs; and (ii) change the title to "Changes in Day Orders" which reflects the retained material. Similarly, Supplementary Material .31 ("Orders sent to representatives"), .32 ("Report not received"), .33 ("Addressed order or order handed to DMM"), .34 ("Unaddressed order"), .35 ("Erroneous statement"), .36 ("Legibility of orders"), .37 ("Identity of stock"), .38 ("Reports, written and oral") and .39 ("Duplicate reports") of NYSE Alternext <sup>15</sup> Rule 123A are proposed for deletion as they speak to transmitting or giving orders to DMMs, DMMs receiving orders, DMMs giving reports on orders, and similar provisions.

<sup>14</sup> See e-mail from Deanna G. W. Logan, Managing Director, NYSE Regulation, Inc., to David Liu, Assistant Director, Division of Trading and Markets, Commission, dated February 13, 2009 (making technical edits) ("February 13th e-mail").

<sup>15</sup> See February 13th e-mail, *supra*, note 14.

In addition, the Exchange proposes to delete NYSE Alternext Rule 123B(b)(2)(B) because it speaks of orders received by the DMM through the Designated Order Turnaround System and to erroneous reports sent by the DMM on executions. These functions are no longer handled in this manner. As previously explained, order acceptance and reports of executions are handled by Exchange systems. The Exchange also proposes to delete NYSE Alternext Rule 123B(d) because it describes orders being sent to and executed by the DMM.

The Exchange also proposes to amend paragraph (2)(A) of Rule 123B(b) to have it apply to all members if the member makes an erroneous report of the price of a transaction, by substituting the word "member" for the word "broker" in the rule. This will then include situations in which a DMM makes an erroneous report as to price on a transaction.

NYSE Alternext <sup>16</sup> Rule 92(d)(6) ("Limitations on Members' Trading Because of Customers' Orders") is further proposed for deletion as it restricts DMM proprietary trading during the hours the Exchange is closed. The restriction was predicated on the former specialist system where the specialist had knowledge of customer orders in his or her possession. The restriction is obviated by the fact that the DMM no longer "holds" customer orders. Nevertheless, as members, DMMs will continue to be subject to the rule's general prohibition. Similarly, the last sentence of NYSE Alternext Rule 127(d)(3) ("Block Crosses Outside the Prevailing NYSE Quotation") is proposed for deletion because it also is predicated on the DMM retaining stock for the DMM's own account at a price at which the DMM "holds" unexecuted customer orders.<sup>17</sup>

The Exchange believes that the amendments proposed herein to remove legacy rule language that is inconsistent with the role of the DMM as approved by the Commission in the New Market Model filing are necessary to adequately reflect the functions performed by the DMM.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>19</sup> in particular, in that it is designed

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See NYSE Alternext Rule 104(a)(2)-(5).

<sup>13</sup> In an opening and reopening trade, Display Book will verify that all interest that must be executed in the opening or reopening can be executed at the price chosen by the DMM. If all the interest that must be executed in the transaction cannot be executed at that price, the Display Book will block the execution. In addition, when executing blocks (10,000 shares or more or value of \$200,000 or more), trading out of a gap quote situation or an LRP that locks or crossed the market, the Display Book may adjust the execution price if there is enough interest on the Display Book to complete the transaction at a better price.

to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed rule changes are consistent with these principles in that it amends legacy rules to accurately reflect the role performed by the Exchange's market maker thus removing impediments to and perfecting the mechanism of a free and open market.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>20</sup> and Rule 19b-4(f)(6) thereunder.<sup>21</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.<sup>22</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative

delay and designate the proposed rule change operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change seeks to remove legacy language that is inconsistent with the role performed by DMMs as approved by the Commission in NYSE's New Market Model filing,<sup>23</sup> which also applies to DMMs on Alternext. Furthermore, it seeks to clarify its rule text in order to avoid any undue confusion on the part of Exchange market participants as it relates to the function performed by DMMs. Therefore, the Commission designates the proposal operative upon filing.<sup>24</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>25</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEALTR-2009-09 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEALTR-2009-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/>

[rules/sro.shtml](#)). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEALTR-2009-09 and should be submitted on or before March 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-3981 Filed 2-24-09; 8:45 am]

BILLING CODE 8011-01-P

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59418; File No. SR-NYSEALTR-2009-07]

#### **Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide Instructions as to the Payment of Listing Fees in Connection With the Listing of Additional Securities**

February 18, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on February 2, 2009, NYSE Alternext US LLC ("NYSE Alternext" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I and II below, which items have been prepared by the Exchange. NYSE Alternext filed the proposed rule change pursuant to Section 19(b)(3)(A) of the

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>23</sup> See *supra* note 10.

<sup>24</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>25</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>26</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Section 332 of the Exchange's Company Guide to provide instructions as to the payment of listing fees in connection with the listing of additional securities. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary and at the Commission's Public Reference room.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE Alternext has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

Section 332 of the Exchange's Company Guide provides that a check drawn to the order of "NYSE Alternext US LLC" should accompany each application for the listing of additional securities of a previously listed class. In the absence of specific instruction to the contrary, it has been the Exchange's experience that many companies have complied with the plain wording of this provision and forwarded the check along with the listing application to the regulatory staff that are responsible for processing the listing applications. The Exchange believes that it is inappropriate for the employees of NYSE Regulation who process listing applications to be accepting payments on behalf of the business. Furthermore, the internal routing of checks to the Exchange's Treasury Department from NYSE Regulation leads to unnecessary

delays and the possibility that checks may be lost or not cashed on a timely basis. As such, the Exchange proposes to amend Section 332 to provide that checks in payment of listing fees in connection with listings of additional shares should be sent to the following address: NYSE Alternext US LLC, Attn: Treasury Department, 20 Broad Street, 9th Floor, New York, NY 10005.

Section 332 as amended will require that checks sent to the Treasury Department in payment of listing fees should be accompanied by a copy of the related listing application required by Section 303 of the Company Guide, to ensure that Exchange staff knows to apply the funds to the listing fee obligation incurred in connection with that listing application. Companies should continue to provide a copy of the listing application required by Section 303, accompanied by the exhibits detailed in Section 306, to the staff of NYSE Regulation who process listing applications on behalf of NYSE Alternext.

##### **2. Statutory Basis**

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>5</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendment to Section 332 is consistent with the requirements of Section 6(b)(5), as it simply provides practical guidance as to how to make payments of listing fees payable to the Exchange in connection with listings of additional securities, without making any change to the fees themselves.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms, become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.<sup>8</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii).

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so would enable the Exchange to immediately direct issuers to send checks for the listing of additional shares to the appropriate non-regulatory staff, and ensure proper application of the fees. Further, the proposal will help to maintain the integrity of the Exchange's review process for the listing of additional shares by ensuring the NYSE regulatory staff is not improperly accepting payments on behalf of the listing business. Accordingly, the Commission designates the proposed rule change as operative upon filing.<sup>9</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>9</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEALTR-2009-07 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-NYSEALTR-2009-07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEALTR-2009-07 and should be submitted on or before March 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-3982 Filed 2-24-09; 8:45 am]

**BILLING CODE 8011-01-P**

#### **SOCIAL SECURITY ADMINISTRATION**

##### **Agency Information Collection Activities: Proposed Request and Comment Request**

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and an extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Reports Clearance Officer to the addresses or fax numbers listed below.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202-395-6974, E-mail address: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov). (SSA), Social Security Administration, DCBPM, Attn: Reports Clearance Officer, 1332 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-965-6400, E-mail address: [OPLM.RCO@ssa.gov](mailto:OPLM.RCO@ssa.gov).

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. Therefore, your comments would be most helpful if you submit them to SSA within 60 days from the date of this publication. Individuals can obtain copies of the collection instrument by calling the SSA Reports Clearance Officer at 410-965-3758 or by writing to the e-mail address listed above.

1. Medical or Psychological Review of Childhood Disability Evaluation Form (SSA-538)—20 CFR 416.1040, 416.1043, 416.1045, 416.924(g)—0960-0675. SSA's regional review component use Form SSA-536 to facilitate the contract medical or psychological consultant's

review of the Childhood Disability Evaluation Form (SSA-538). The SSA-536 records the reviewing consultant's assessment of the evaluation prepared by the adjudicating component. The consultant completes an SSA-536 for each Title XVI childhood disability case he or she reviews because a Childhood Disability Evaluation Form (SSA-538) is required in each case. The respondents are consultants who review the adjudicating component's completion of the Childhood Disability Evaluation Form (SSA-538).

*Type of Request:* Revision of an OMB-approved information collection.

*Number of Respondents:* 256.

*Frequency of Response:* 66.

*Average Burden Per Response:* 12 minutes.

*Estimated Annual Burden:* 3,379 hours.

2. Identifying Information for Possible Direct Payment of Authorized Fees—0960-0730. SSA uses Form SSA-1695 to collect information from appointed representatives to process and facilitate direct payment of authorized fees to a financial institution. SSA will use this information to issue a Form 1099-MISC, if applicable. The respondents are attorneys and other individuals who represent claimants for benefits before SSA.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 10,000.

*Frequency of Response:* 40.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 66,667 hours.

II. SSA has submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410-965-3758, or by writing to the above listed address.

Application for a Social Security Card—20 CFR 422.103-.110—0960-0066. SSA collects information on Forms SS-5 (used in the United States) and SS-5-FS (used outside the United States) to issue original or replacement Social Security cards. SSA is revising the race/ethnicity question on the forms to comply with Office of Management and Budget standards. Additionally, SSA is making several other minor changes to the form's instructions. The respondents are applicants for original and replacement Social Security cards.

*Type of Request:* Revision to an OMB-approved information collection.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

Application scenario	Number of annual respondents	Completion time (minutes)	Burden hours
Respondents who do not have to provide parents' SSNs .....	13,000,000	8½	1,841,667
Respondents who are asked to provide parents' SSNs (for application for original SSN cards for children under age 18) .....	540,000	9	81,000
Applicants age 12 or older who need to answer additional questions so SSA can determine whether an SSN was previously assigned .....	40,000	9½	6,333
Applicants asking for a replacement SSN card beyond the new allowable limits (i.e., who must provide additional documentation to accompany the application) .....	4,000	60	4,000
Totals .....	13,584,000	.....	1,933,000

Dated: February 18, 2009.

**John Biles,**

*Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.*

[FR Doc. E9-3894 Filed 2-24-09; 8:45 am]

BILLING CODE 4191-02-P

## DEPARTMENT OF STATE

[Public Notice 6532]

### Meeting of the Joint Forum on Environmental Technical Cooperation ("Joint Forum") Pursuant to the United States-Jordan Joint Statement on Environmental Technical Cooperation

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of State is providing notice that, as set forth in paragraph three of the United States-Jordan Joint Statement on Environmental Technical Cooperation ("Joint Statement"), the U.S. and Jordan will hold a meeting of the Joint Forum on Environmental and Technical Cooperation ("Joint Forum") in Amman, Jordan, on March 3, 2009, at the Sheraton Amman Al Nabil Hotel & Towers, 5th Circle, P.O. Box 840064, Amman 11184. See below under **SUPPLEMENTARY INFORMATION** for additional details on the purpose of the meeting. During the meeting, the U.S. and Jordan will present information on cooperative environmental work they are undertaking pursuant to the Joint Statement, and will formally review and adopt a new 2008-2011 Work Program for implementing the Joint Statement. The entire meeting will be open to the public. The meeting will be conducted in English, and there will be no Arabic translation.

The Department of State invites agencies, organizations, and members of the public to submit written comments or suggestions regarding agenda items. The Department of State also invites comment on the draft 2008-2011 Work Program. In preparing such comments or suggestions, we encourage submitters

to refer to: (1) The U.S.-Jordan Joint Statement on Environmental Technical Cooperation, (2) the draft 2008-2011 Work Program Pursuant to the U.S.-Jordan Joint Statement on Environmental Cooperation, (3) the Plan of Action: U.S.-Jordan Joint Forum on Environmental Technical Cooperation, (4) Article 5 (Environment) of the Agreement Between the U.S. and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area and (5) the Environmental Review of the FTA, which are all available at: <http://www.state.gov/g/oes/env/trade/>.

**DATES:** To be assured of timely consideration, all written comments or suggestions are requested no later than February 26, 2009.

**ADDRESSES:** Written comments or suggestions should be e-mailed ([dod43075@state.gov](mailto:dod43075@state.gov)) or faxed ((202) 647-5947) to Dao Do, U.S. Department of State, Bureau of Oceans, Environment, and Science, Office of Environmental Policy, with the subject line "U.S.-Jordan Joint Forum Meeting."

**FOR FURTHER INFORMATION, CONTACT:** Dao Do, telephone (202) 647-6777.

**SUPPLEMENTARY INFORMATION:** In Paragraph 3 of the U.S.-Jordan Joint Statement on Environmental Technical Cooperation, the United States and Jordan establish a Joint Forum on Environmental and Technical Cooperation that will meet regularly. The mandate of the Joint Forum is to advance environmental protection in Jordan by developing environmental technical cooperation initiatives, which take into account environmental priorities, and which are agreed to by the two Governments. In paragraph 4, the Countries identify an initial focus of technical cooperation on Jordanian environmental quality issues and the development and effective implementation of Jordanian environmental laws, as defined in Articles 5.4 and 18.2(a) of the FTA.

The first Plan of Action focused on implementing a strategic vision for the Ministry of Environment in Jordan,

established in 2002, to promote sustainable economic growth and development. The plan outlined activities to, among other things, strengthen the Jordanian Ministry of Environment's capacity for setting, implementing, and ensuring compliance with environmental standards; harness market forces to protect the environment while bringing economic benefits; undertake industrial wastewater treatment and hazardous waste management for a target region; seek out economic benefits of ecotourism; and promote development of a regional network of environmental lawmakers and enforcement officials.

The new Work Program for 2008-2011 identifies long-term goals to achieve (1) Compliance with obligations in Article 5 (Environment) of the Agreement Between the U.S. and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area; (2) Improved protection and conservation of the environment, including natural resources; (3) Transparency and meaningful public participation in environmental decision-making; and (4) A culture of environmental protection and compliance with environmental laws through, among other things, the promotion of economic opportunities; voluntary measures to enhance environmental performance; and job creation. The new Work Program specifies cooperative activities in four main priority areas which reflect the "Selected Environmental Technical Cooperation Programs" listed in the Annex to the October 24, 2000 Joint Statement. These areas include institutional and policy strengthening; biodiversity conservation and improved management of protected areas; improved private sector environmental performance; and environmental education, transparency, and public participation in environmental decision-making and enforcement.

At the Joint Forum, U.S. and Jordanian officials will present information on cooperative environmental work they are

undertaking pursuant to the Joint Statement, and will formally review and adopt a new 2008–2011 Work Program for implementing the Joint Statement. The entire meeting will be open to the public. The meeting will be conducted in English, and there will be no Arabic translation.

Please refer to the State Department Web site at <http://www.state.gov/g/oes/env/>.

Dated: February 12, 2009.

**Daniel T. Fantozzi,**

*Director, Office of Environmental Policy,  
Department of State.*

[FR Doc. E9–4041 Filed 2–24–09; 8:45 am]

**BILLING CODE 4710–19–P**

## SUSQUEHANNA RIVER BASIN COMMISSION

### Notice of Public Hearing and Commission Meeting

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice of public hearing and commission meeting.

**SUMMARY:** The Susquehanna River Basin Commission will hold a public hearing as part of its regular business meeting beginning at 1 p.m. on March 12, 2009, in Scranton, Pa. At the public hearing, the Commission will consider: (1) Action on certain water resources projects and the modification of certain docket approvals, including one diversion into and out of the basin for water supply; (2) the rescission of several previous docket approvals; (3) a request for an administrative hearing on a project previously approved by the Commission; and (4) the adoption of a records processing fee schedule. Details concerning the matters to be addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

**DATES:** March 12, 2009.

**ADDRESSES:** Hilton Scranton & Conference Center, 100 Adams Avenue, Scranton, Pennsylvania 18503–1826.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; e-mail: [rcairo@srbc.net](mailto:rcairo@srbc.net) or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; e-mail: [srichardson@srbc.net](mailto:srichardson@srbc.net).

**SUPPLEMENTARY INFORMATION:** In addition to the public hearing and its related action items identified below, the business meeting also includes actions or presentations on the

following items: (1) The United States Geological Survey (USGS) Velocity Demonstration Project; (2) present hydrologic conditions of the basin; (3) the 2009 Water Resources Program; (4) an Application Fee Policy for Mine Drainage Withdrawals to guide the granting of fee waivers or reductions to projects withdrawing mine drainage water; (5) presentation of the William Jeanes Award; (6) an Access to Records Policy governing public access to Commission records; (7) certain grant applications; (8) by-laws governing the organization and operation of the Commission; and (9) revision of the FY 2010 budget. The Commission will also hear a Legal Counsel's report.

### Public Hearing—Projects Scheduled for Action

1. *Project Sponsor and Facility:* ALTA Operating Company, LLC (DuBois Creek), Great Bend Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.010 mgd.

2. *Project Sponsor and Facility:* ALTA Operating Company, LLC (Snake Creek), Liberty Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.099 mgd.

3. *Project Sponsor and Facility:* ALTA Operating Company, LLC (Susquehanna River), Great Bend Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 3.000 mgd.

4. *Project Sponsor and Facility:* Anadarko E&P Company LP (Pine Creek), Cummings Township, Lycoming County, Pa. Application for surface water withdrawal of up to 2.450 mgd.

5. *Project Sponsor and Facility:* Anadarko E&P Company LP (West Branch Susquehanna River-1), Chapman Township, Clinton County, Pa. Application for surface water withdrawal of up to 0.720 mgd.

6. *Project Sponsor and Facility:* Anadarko E&P Company LP (West Branch Susquehanna River-2), Renovo Borough, Clinton County, Pa. Application for surface water withdrawal of up to 0.720 mgd.

7. *Project Sponsor and Facility:* Anadarko E&P Company LP (West Branch Susquehanna River-3), Nippenose Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.720 mgd.

8. *Project Sponsor and Facility:* Anadarko E&P Company LP (West Branch Susquehanna River-4), Burnside Township, Centre County, Pa. Application for surface water withdrawal of up to 0.720 mgd.

9. *Project Sponsor and Facility:* Cabot Oil & Gas Corporation (for operations in

Susquehanna and Wyoming Counties, Pa.). Modification of consumptive use to comport with new regulations effective on January 15, 2009 (Docket No. 20080904).

10. *Project Sponsor:* CAN DO, Inc. Project Facility: Corporate Center, Hazle Township, Luzerne County, Pa. Application for groundwater withdrawal of 0.347 mgd from Well 1.

11. *Project Sponsor and Facility:* Cherokee Pharmaceuticals, LLC, Riverside Borough, Northumberland County, Pa. Application for consumptive water use of up to 0.500 mgd.

12. *Project Sponsor and Facility:* Cherokee Pharmaceuticals, LLC, Riverside Borough, Northumberland County, Pa. Application for surface water withdrawal of up to 34.000 mgd from the Susquehanna River.

13. *Project Sponsor and Facility:* Cherokee Pharmaceuticals, LLC, Riverside Borough, Northumberland County, Pa. Application for groundwater withdrawal of 0.600 mgd for treatment of groundwater contamination.

14. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (for operations in Chemung and Tioga Counties, N.Y., and Bradford, Susquehanna, and Wyoming Counties, Pa.). Modification of consumptive use to comport with new regulations effective on January 15, 2009 (Docket No. 20080902).

15. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (Susquehanna River), Terry Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

16. *Project Sponsor and Facility:* Chief Oil & Gas LLC (for operations in Bradford County, Pa.). Modification of consumptive use to comport with new regulations effective on January 15, 2009 (Docket No. 20080911).

17. *Project Sponsor and Facility:* Chief Oil & Gas LLC (for operations in Lycoming County, Pa.) Modification of consumptive use to comport with new regulations effective on January 15, 2009 (Docket No. 20080934).

18. *Project Sponsor and Facility:* Chief Oil & Gas LLC (for operations in Clearfield County, Pa.). Modification of consumptive use to comport with new regulations effective on January 15, 2009 (Docket No. 20081201).

19. *Project Sponsor and Facility:* Chief Oil & Gas LLC (Sugar Creek), West Burlington Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.053 mgd.

20. *Project Sponsor and Facility:* Citrus Energy (for operations in

Wyoming County, Pa.). Modification of consumptive use to comport with new regulations effective on January 15, 2009 (Docket No. 20081204).

21. *Project Sponsor and Facility:* Delta Borough, Peach Bottom Township, York County, Pa. Application for groundwater withdrawal of 0.032 mgd from Well DR-2.

22. *Project Sponsor and Facility:* East Resources, Inc. (for operations in Elmira, N.Y., Area). Modification of consumptive use to comport with new regulations effective on January 15, 2009 (Docket No. 20080603).

23. *Project Sponsor and Facility:* East Resources, Inc. (for operations in Mansfield, Pa., Area). Modification of consumptive use to comport with new regulations effective on January 15, 2009 (Docket No. 20080608).

24. *Project Sponsor and Facility:* EOG Resources, Inc. (Bennett Branch-1, Sinnemahoning Creek), Jay Township, Elk County, Pa. Application for surface water withdrawal of up to 0.171 mgd.

25. *Project Sponsor and Facility:* EOG Resources, Inc. (Bennett Branch-2, Sinnemahoning Creek), Jay Township, Elk County, Pa. Application for surface water withdrawal of up to 0.152 mgd.

26. *Project Sponsor and Facility:* EOG Resources, Inc. (Bennett Branch-3, Sinnemahoning Creek), Huston Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.290 mgd.

27. *Project Sponsor and Facility:* EOG Resources, Inc. (Chemung River-1), Chemung Town, Chemung County, N.Y. Application for surface water withdrawal of up to 0.322 mgd.

28. *Project Sponsor and Facility:* EOG Resources, Inc. (Chemung River-2), Athens Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.322 mgd.

29. *Project Sponsor and Facility:* EOG Resources, Inc. (Kersey Run), Jay Township, Elk County, Pa. Application for surface water withdrawal of up to 0.070 mgd.

30. *Project Sponsor and Facility:* EOG Resources, Inc. (Sugar Creek-1), Burlington Borough, Bradford County, Pa. Application for surface water withdrawal of up to 0.099 mgd.

31. *Project Sponsor and Facility:* EOG Resources, Inc. (Sugar Creek-2), North Towanda Town, Bradford County, Pa. Application for surface water withdrawal of up to 0.099 mgd.

32. *Project Sponsor and Facility:* EOG Resources, Inc. (Susquehanna River-1), Athens Borough, Bradford, Pa. Application for surface water withdrawal of up to 0.322 mgd.

33. *Project Sponsor and Facility:* EOG Resources, Inc. (Susquehanna River-2),

Ulster and Sheshequin Townships, Bradford County, Pa. Application for surface water withdrawal of up to 0.322 mgd.

34. *Project Sponsor and Facility:* EOG Resources, Inc. (West Creek), Benzinger Township, Elk County, Pa. Application for surface water withdrawal of up to 0.096 mgd.

35. *Project Sponsor and Facility:* Fortuna Energy Inc. (for operations in Southern Tier of N.Y., and Tioga and Bradford Counties, Pa.). Modification of consumptive use to comport with new regulations effective on January 15, 2009 (Docket No. 20080601).

36. *Project Sponsor and Facility:* Fortuna Energy Inc. (Sugar Creek), West Burlington Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.250 mgd.

37. *Project Sponsor and Facility:* Global Tungsten & Powders Corp., Towanda Borough, Bradford County, Pa. Application for consumptive water use of up to 0.170 mgd.

38. *Project Sponsor:* IBM Corp. Project Facility: Endicott, Village of Endicott, Broome County, N.Y. Application for groundwater withdrawal of 1.010 mgd for treatment of groundwater contamination.

39. *Project Sponsor and Facility:* J-W Operating Company (for operations in Cameron, Clearfield, and Elk Counties, Pa.). Modification of consumptive use to comport with new regulations effective on January 15, 2009 (Docket No. 20081211).

40. *Project Sponsor and Facility:* J-W Operating Company (Sterling Run), Lumber Township, Cameron County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

41. *Project Sponsor:* New Enterprise Stone & Lime Co., Inc. Project Facility: Ashcom Quarry, Snake Spring Valley Township, Bedford County, Pa. Modification to docket approval (Docket No. 20031204).

42. *Project Sponsor and Facility:* Pennsylvania General Energy Company, LLC (for operations in Potter and McKean Counties, Pa.). Modification of consumptive use to comport with new regulations effective on January 15, 2009 (Docket No. 20080921).

43. *Project Sponsor and Facility:* Range Resources—Appalachia, LLC (for operations in Bradford, Centre, Clinton, Lycoming, Sullivan, and Tioga Counties, Pa.). Modification of consumptive use to comport with new regulations effective on January 15, 2009 (Docket No. 20080931).

44. *Project Sponsor and Facility:* Rex Energy Corporation (for operations in Centre and Clearfield Counties, Pa.). Modification of consumptive use to

comport with new regulations effective on January 15, 2009 (Docket No. 20080941).

45. *Project Sponsor and Facility:* Schuylkill County Municipal Authority, Pottsville Public Water Supply System, Mount Laurel Subsystem, Butler Township, Schuylkill County, Pa. Application for a withdrawal of up to 0.432 mgd from the Gordon Well.

46. *Project Sponsor and Facility:* Turm Oil, Inc. (for operations in Susquehanna County, Pa.). Modification of consumptive use to comport with new regulations effective on January 15, 2009 (Docket No. 20081223).

47. *Project Sponsor and Facility:* Ultra Resources (for operations in Tioga and Potter Counties, Pa.). Modification of consumptive use to comport with new regulations effective on January 15, 2009 (Docket No. 20081228).

48. *Project Sponsor and Facility:* Ultra Resources (Pine Creek), Pike Township, Potter County, Pa. Application for surface water withdrawal of 0.430 mgd.

49. *Project Sponsor and Facility:* Water Treatment Solutions, LLC (West Branch Susquehanna River), Williamsport, Lycoming County, Pa. Application for surface water withdrawal of 0.499 mgd.

#### **Public Hearing—Project Scheduled for Action Involving a Diversion**

1. *Project Sponsor and Facility:* Schuylkill County Municipal Authority, Pottsville Public Water Supply System, Mount Laurel Subsystem, Butler Township, Schuylkill County, Pa. Applications for: (1) An out-of-basin diversion to the Delaware River Basin for water supply; and (2) an existing into-basin diversion of wastewater of up to 1.100 mgd from the Delaware River Basin.

#### **Public Hearing—Projects Scheduled for Rescission Action**

1. *Project Sponsor:* Harristown Development Corporation. Project Facility: Strawberry Square (Docket No. 20030410), City of Harrisburg, Dauphin County, Pennsylvania.

2. *Project Sponsor and Facility:* Millennium Pipeline Company, L.L.C. (Docket No. 20080301), Broome, Tioga, and Chemung Counties, N.Y.

3. *Project Sponsor and Facility:* Millennium Pipeline Company, L.L.C. (Docket No. 20080302), Town of Windsor, Broome County, and Town of Horseheads, Chemung County, N.Y.

#### **Public Hearing—Records Processing Fee Schedule**

1. The proposed fee schedule would accompany an Access to Records Policy that the Commission is expected to

consider, which would establish procedures for requesting access to Commission records. The fees would reimburse the Commission for the costs associated with meeting records requests.

### Opportunity To Appear and Comment

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102-2391, or submitted electronically to Richard A. Cairo, General Counsel, e-mail: [rcairo@srbc.net](mailto:rcairo@srbc.net) or Stephanie L. Richardson, Secretary to the Commission, e-mail: [srichardson@srbc.net](mailto:srichardson@srbc.net). Comments mailed or electronically submitted must be received prior to March 10, 2009, to be considered.

**Authority:** Pub. L. 91-575, 84 Stat. 1509 *et seq.*, 18 CFR Parts 806, 807, and 808.

Dated: February 10, 2009.

**Thomas W. Beauduy,**  
Deputy Director.

[FR Doc. E9-3974 Filed 2-24-09; 8:45 am]

**BILLING CODE 7040-01-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[DOT-OST-2004-17264]

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending February 14, 2009

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order,

or in appropriate cases a final order without further proceedings.

**Docket Number:** DOT-OST-2004-17264.

**Date Filed:** February 11, 2009.

**Due Date for Answers, Conforming Applications, or Motion to Modify Scope:** March 4, 2009.

**Description:** Application of JetBlue Airways Corporation requesting renewal of its exemption authority to provide scheduled air transportation of passengers, freight and mail from Boston, Massachusetts ("BOS") to Bermuda ("BDA"); and renewal of its request for a certificate of public convenience and necessity to operate such service to Bermuda.

**Renee V. Wright,**

Program Manager, Docket Operations,  
Federal Register Liaison.

[FR Doc. E9-3989 Filed 2-24-09; 8:45 am]

**BILLING CODE 4910-9X-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activity Seeking OMB Approval

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 31, 2008, vol. 73, no. 212, page 65003. 14 CFR Part 298 requires air carrier operators to obtain a certificate of public convenience and necessity from the DOT, with the exception of air taxi and commuter air operators.

**DATES:** Please submit comments by March 27, 2009.

**FOR FURTHER INFORMATION CONTACT:** Carla Mauney at [Carla.Mauney@faa.gov](mailto:Carla.Mauney@faa.gov).

### SUPPLEMENTARY INFORMATION:

#### Federal Aviation Administration (FAA)

**Title:** Exemptions for Air Taxi and Commuter Air Carrier Operations.

**Type of Request:** Extension without change of a currently approved collection.

**OMB Control Number:** 2120-0633.

**Form(s) OST Form 4507.**

**Affected Public:** An estimated 2,040 Respondents.

**Frequency:** This information is collected on occasion.

**Estimated Average Burden Per Response:** Approximately 30 minutes per response.

**Estimated Annual Burden Hours:** An estimated 1,026 hours annually

**Abstract:** 14 CFR Part 298 requires air carrier-operators to obtain a certificate of public convenience and necessity from the DOT, with the exception of air taxi and commuter air operators.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov), or faxed to (202) 395-6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

**Comments Are Invited on:** Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on February 18, 2009.

**Carla Mauney,**

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. E9-3907 Filed 2-24-09; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activity Seeking OMB Approval

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October

31, 2008, vol. 73, no. 212, pages 65004–65005. The information kept is used by the FAA as proof that non-Federal navigation facilities are maintained within certain specified tolerances.

**DATES:** Please submit comments by March 27, 2009.

**FOR FURTHER INFORMATION CONTACT:** Carla Mauney at [Carla.Mauney@faa.gov](mailto:Carla.Mauney@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Federal Aviation Administration (FAA)**

*Title:* Procedures for Non-Federal Navigation Facilities.

*Type of Request:* Extension without change of a currently approved collection.

*OMB Control Number:* 2120–0014.

*Form(s):* FAA Forms 6030–1, 6030–17, 6790–4, 6790–5.

*Affected Public:* An estimated 2,413 respondents.

*Frequency:* This information is collected on occasion.

*Estimated Average Burden Per Response:* Approximately 13.72 hours per response.

*Estimated Annual Burden Hours:* An estimated 33,116 hours annually.

*Abstract:* The non-Federal navigation facilities are electrical/electronic aids to air navigation which are purchased, installed, operated, and maintained by an entity other than the FAA and are available for use by the flying public. These aids may be located at unattended remote sites or airport terminals. The information kept is used by the FAA as proof that the facility is maintained within certain specified tolerances.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov), or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information

on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on February 18, 2009.

**Carla Mauney,**

*FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. E9–3913 Filed 2–24–09; 8:45 am]

**BILLING CODE 4910–13–M**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**Noise Exposure Map Notice for Buckeye Municipal Airport, Buckeye, AZ**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Town of Buckeye, Maricopa County, Arizona for Buckeye Municipal Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

**DATES:** *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is September 22, 2008.

**FOR FURTHER INFORMATION CONTACT:** Victor Globa, Federal Aviation Administration, Los Angeles Airports District Office, 15000 Aviation Boulevard, Hawthorne, California 90261–1000, Telephone: 310/725–3637.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Buckeye Municipal Airport are in compliance with applicable requirements of Part 150, effective September 22, 2008. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as “the Act”), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with

the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the Town of Buckeye, Buckeye, Arizona. The documentation that constitutes the “Noise Exposure Maps” as defined in section 150.7 of Part 150 includes: Exhibit I “Existing Aircraft Operations (2006) Noise Exposure Map,” and Exhibit 2 “Projected Aircraft Operations (2011) Noise Exposure Map.” The Noise Exposure Maps contain current and forecast information including the depiction of the airport and its boundaries, the runway configurations, land uses such as residential, open space, commercial/office, community facilities, libraries, churches, open space, infrastructure, vacant and warehouse and those areas within the Yearly Day-Night Average Sound Level (DNL) 65, 70 and 75 noise contours. Estimates for the number of people within these contours for the year 2006 are shown in Table 46. Estimates of the future residential population within the 2011 noise contours are shown in Table 4E. Flight tracks for the existing and the five-year forecast Noise Exposure Maps are found in Figures 3D, 3E and 3F. The type and frequency of aircraft operations (including nighttime operations) are found in Table 3C. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on September 22, 2008.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or

in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration,  
Community and Environmental Needs  
Division, APP-600, 800 Independence  
Avenue, SW., Washington, DC 20591-  
0001.

Federal Aviation Administration,  
Western-Pacific Region, Airports  
Division, Room 3012, 15000 Aviation  
Boulevard, Hawthorne, California  
90261-1000.

Federal Aviation Administration, Los  
Angeles Airports District Office,  
15000 Aviation Boulevard, Room  
3000, Hawthorne, California 90261-  
1000.

Ann Quigley, Airport Manager, Buckeye  
Municipal Airport, 423 Arizona  
Eastern Avenue, Buckeye, AZ 85326.

Questions may be directed to the  
individual named above under the  
heading **FOR FURTHER INFORMATION  
CONTACT**.

Issued in Hawthorne, California on  
February 13, 2009.

**George E. Aiken,**

*Acting Manager, Airports Division, AWP-600,  
Western-Pacific Region.*

[FR Doc. E9-3816 Filed 2-24-09; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2009-0015]

#### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration,  
Department of Transportation.

**ACTION:** Invitation for public comments  
on a requested administrative waiver of  
the Coastwise Trade Laws for the vessel  
GRANSEA'S.

**SUMMARY:** As authorized by 46 U.S.C.  
12121, the Secretary of Transportation,  
as represented by the Maritime  
Administration (MARAD), is authorized  
to grant waivers of the U.S.-build  
requirement of the coastwise laws under  
certain circumstances. A request for  
such a waiver has been received by  
MARAD. The vessel, and a brief  
description of the proposed service, is  
listed below. The complete application  
is given in DOT docket MARAD-2009-  
XXXX at <http://www.regulations.gov>.  
Interested parties may comment on the  
effect this action may have on U.S.  
vessel builders or businesses in the U.S.  
that use U.S.-flag vessels. If MARAD  
determines, in accordance with 46  
U.S.C. 12121 and MARAD's regulations  
at 46 CFR Part 388 (68 FR 23084; April  
30, 2003), that the issuance of the  
waiver will have an unduly adverse  
effect on a U.S.-vessel builder or a  
business that uses U.S.-flag vessels in  
that business, a waiver will not be  
granted. Comments should refer to the  
docket number of this notice and the  
vessel name in order for MARAD to  
properly consider the comments.  
Comments should also state the  
commenter's interest in the waiver  
application, and address the waiver  
criteria given in § 388.4 of MARAD's  
regulations at 46 CFR Part 388.

**DATES:** Submit comments on or before  
March 27, 2009.

**ADDRESSES:** Comments should refer to  
docket number MARAD-2009-XXXX.  
Written comments may be submitted by  
hand or by mail to the Docket Clerk,  
U.S. Department of Transportation,  
Docket Operations, M-30, West  
Building Ground Floor, Room W12-140,  
1200 New Jersey Avenue, SE.,  
Washington, DC 20590. You may also  
send comments electronically via the  
Internet at <http://www.regulations.gov>.  
All comments will become part of this  
docket and will be available for  
inspection and copying at the above  
address between 10 a.m. and 5 p.m.,  
E.T., Monday through Friday, except  
federal holidays. An electronic version

of this document and all documents  
entered into this docket is available on  
the World Wide Web at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of  
Transportation, Maritime  
Administration, 1200 New Jersey  
Avenue, SE., Room W21-203,  
Washington, DC 20590. Telephone 202-  
366-5979.

**SUPPLEMENTARY INFORMATION:** As  
described by the applicant the intended  
service of the vessel GRANSEA'S is:

*Intended Use:* "coast wise charter for  
12 passengers or less."

*Geographic Region:* "Florida."

#### Privacy Act

Anyone is able to search the  
electronic form of all comments  
received into any of our dockets by the  
name of the individual submitting the  
comment (or signing the comment, if  
submitted on behalf of an association,  
business, labor union, etc.). You may  
review DOT's complete Privacy Act  
Statement in the **Federal Register**  
published on April 11, 2000 (Volume  
65, Number 70; Pages 19477-78).

Dated: February 17, 2009.

By order of the Maritime Administrator.

**Leonard Sutter,**

*Secretary, Maritime Administration.*

[FR Doc. E9-4017 Filed 2-24-09; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF THE TREASURY

### United States Mint

#### Notification of United States Mint 2009 Presidential \$1 Coin 25-Coin Numismatic Rolls Pricing

**SUMMARY:** The United States Mint is  
announcing the price of the 2009  
Presidential \$1 Coin 25-Coin  
Numismatic Rolls.

The 2009 Presidential \$1 Coin 25-  
Coin Numismatic Rolls, honoring  
Presidents William Henry Harrison,  
John Tyler, James K. Polk and Zachary  
Taylor, will be priced at \$35.95 each.  
Rolls of Presidential \$1 Coins struck at  
both the United States Mint at  
Philadelphia and the United States Mint  
at Denver will be available.

The first 2009 Presidential \$1 Coin  
25-Coin Numismatic Roll, honoring  
President William Henry Harrison, will  
be offered for sale on February 19, 2009.

**FOR FURTHER INFORMATION CONTACT:** B.B.  
Craig, Associate Director for Sales and  
Marketing; United States Mint; 801  
Ninth Street, NW.; Washington, DC  
20220; or call 202-354-7500.

**Authority:** 31 U.S.C. 5111, 5112 & 9701.

Dated: February 19, 2009.

**Edmund C. Moy,**

*Director, United States Mint.*

[FR Doc. E9-4005 Filed 2-24-09; 8:45 am]

**BILLING CODE 4810-37-P**



# Federal Register

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**Wednesday,  
February 25, 2009**

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## **Part II**

## **Department of the Interior**

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### **Fish and Wildlife Service**

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#### **50 CFR Part 17**

**Endangered and Threatened Wildlife and  
Plants; Revised Designation of Critical  
Habitat for the Contiguous United States  
Distinct Population Segment of the  
Canada Lynx; Final Rule**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

[FWS-R6-ES-2008-0026; 92210-1117-0000-B4]

RIN 1018-AV78

**Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Contiguous United States Distinct Population Segment of the Canada Lynx****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate revised critical habitat for the contiguous United States distinct population segment of the Canada lynx (*Lynx canadensis*) (lynx) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 39,000 square miles (mi<sup>2</sup>) (101,010 square kilometers (km<sup>2</sup>)) fall within the boundaries of the revised critical habitat designation, in five units in the States of Maine, Minnesota, Montana, Wyoming, Idaho, and Washington.

**DATES:** This rule becomes effective on March 27, 2009.

**ADDRESSES:** Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours, at the Montana Ecological Services Office, 585 Shepard Way, Helena, MT 59601; telephone 406-449-5225. The final rule, environmental assessment, and economic analysis are available on the Internet at <http://www.regulations.gov> and at <http://mountain-prairie.fws.gov/species/mammals/lynx/criticalhabitat.htm>.

**FOR FURTHER INFORMATION CONTACT:** Mark Wilson, Field Supervisor, Montana Ecological Services Office (see **ADDRESSES** section) (406-449-5225); Lori Nordstrom, Field Supervisor, Maine Field Office (207-827-5938); Tony Sullins, Field Supervisor, Twin Cities Ecological Services Office (Minnesota) (612-725-3548); or Mark Miller, Field Supervisor, Upper Columbia Fish and Wildlife Office (Washington) (509-891-6839).

**SUPPLEMENTARY INFORMATION:****Background**

It is our intent to discuss only topics relevant to the revised designation of critical habitat in this rule. For more information about the listing of the

Canada lynx, refer to the final listing rule published in the **Federal Register** on March 24, 2000 (65 FR 16052), the clarification of findings published in the **Federal Register** on July 3, 2003 (68 FR 40076), the proposed rule to designate revised critical habitat rule published in the **Federal Register** on February 28, 2008 (73 FR 10860), and the notice announcing the availability of the draft economic analysis (DEA), draft environmental assessment, and reopening the comment period that published on October 21, 2008 (73 FR 62450).

**Species Information**

Canada lynx are medium-sized cats, generally measuring 30 to 35 inches (in) (75 to 90 centimeters (cm)) long and weighing 18 to 23 pounds (8 to 10.5 kilograms) (Quinn and Parker 1987, Table 1). They have large, well-furred feet and long legs for traversing snow; tufts on the ears; and short, black-tipped tails.

Lynx are highly specialized predators of snowshoe hare (*Lepus americanus*) (McCord and Cardoza 1982, p. 744; Quinn and Parker 1987, pp. 684-685; Aubry *et al.* 2000, pp. 375-378). Lynx and snowshoe hares are strongly associated with what is broadly described as boreal forest (Bittner and Rongstad 1982, p. 154; McCord and Cardoza 1982, p. 743; Quinn and Parker 1987, p. 684; Agee 2000, p. 39; Aubry *et al.* 2000, pp. 378-382; Hodges 2000a, pp. 136-140 and 2000b, pp. 183-191; McKelvey *et al.* 2000b, pp. 211-232). The predominant vegetation of boreal forest is conifer trees, primarily species of spruce (*Picea* spp.) and fir (*Abies* spp.) (Elliot-Fisk 1988, pp. 34-35, 37-42). In the contiguous United States, the boreal forest types transition to deciduous temperate forest in the Northeast and Great Lakes and to subalpine forest in the west (Agee 2000, pp. 40-41). Lynx habitat can generally be described as moist boreal forests that have cold, snowy winters and a snowshoe hare prey base (Quinn and Parker 1987, p. 684-685; Agee 2000, pp. 39-47; Aubry *et al.* 2000, pp. 373-375; Buskirk *et al.* 2000b, pp. 397-405; Ruggiero *et al.* 2000, pp. 445-447). In mountainous areas, the boreal forests that lynx use are characterized by scattered moist forest types with high hare densities in a matrix of other habitats (e.g., hardwoods, dry forest, non-forest) with low hare densities. In these areas, lynx incorporate the matrix habitat (non-boreal forest habitat elements) into their home ranges and use it for traveling between patches of boreal forest that support high hare densities where most foraging occurs.

Snow conditions also determine the distribution of lynx (Ruggiero *et al.* 2000, pp. 445-449). Lynx are morphologically and physiologically adapted for hunting snowshoe hares and surviving in areas that have cold winters with deep, fluffy snow for extended periods. These adaptations provide lynx a competitive advantage over potential competitors, such as bobcats (*Lynx rufus*) or coyotes (*Canis latrans*) (McCord and Cardoza 1982, p. 748; Buskirk *et al.* 2000a, pp. 86-95; Ruediger *et al.* 2000, p. 1-11; Ruggiero *et al.* 2000, pp. 445, 450). Bobcats and coyotes have a higher foot load (more weight per surface area of foot), which causes them to sink into the snow more than lynx. Therefore, bobcats and coyotes cannot efficiently hunt in fluffy or deep snow and are at a competitive disadvantage to lynx. Long-term snow conditions presumably limit the winter distribution of potential lynx competitors such as bobcats (McCord and Cardoza 1982, p. 748) or coyotes.

**Lynx Habitat Requirements**

Because of the patchiness and temporal nature of high-quality snowshoe hare habitat, lynx populations require large boreal forest landscapes to ensure that sufficient high quality snowshoe hare habitat is available and to ensure that lynx may move freely among patches of suitable habitat and among subpopulations of lynx. Populations that are composed of a number of discrete subpopulations, connected by dispersal, are called metapopulations (McKelvey *et al.* 2000c, p. 25). Individual lynx maintain large home ranges (reported as generally ranging between 12 to 83 mi<sup>2</sup> (31 to 216 km<sup>2</sup>)) (Koehler 1990, p. 847; Aubry *et al.* 2000, pp. 382-386; Squires and Laurion 2000, pp. 342-347; Squires *et al.* 2004b, pp. 13-16, Table 6; Vashon *et al.* 2005a, pp. 7-11). The size of lynx home ranges varies depending on abundance of prey, the animal's gender and age, the season, and the density of lynx populations (Koehler 1990, p. 849; Poole 1994, pp. 612-616; Slough and Mowat 1996, pp. 951, 956; Aubry *et al.* 2000, pp. 382-386; Mowat *et al.* 2000, pp. 276-280; Vashon *et al.* 2005a, pp. 9-10). When densities of snowshoe hares decline, for example, lynx enlarge their home ranges to obtain sufficient amounts of food to survive and reproduce.

In the contiguous United States, the boreal forest landscape is naturally patchy and transitional because it is the southern edge of the boreal forest range. This generally limits snowshoe hare populations in the contiguous United States from achieving densities similar to those of the expansive northern

boreal forest in Canada (Wolff 1980, pp. 123–128; Buehler and Keith 1982, pp. 24, 28; Koehler 1990, p. 849; Koehler and Aubry 1994, p. 84). Additionally, the presence of more snowshoe hare predators and competitors at southern latitudes may inhibit the potential for high-density hare populations (Wolff 1980, p. 128). As a result, lynx generally occur at relatively low densities in the contiguous United States compared to the high lynx densities that occur in the northern boreal forest of Canada (Aubry *et al.* 2000, pp. 375, 393–394) or the densities of species such as the bobcat, which is a habitat and prey generalist.

Lynx are highly mobile and generally move long distances (greater than 60 mi (100 km)) (Aubry *et al.* 2000, pp. 386–387; Mowat *et al.* 2000, pp. 290–294). Lynx disperse primarily when snowshoe hare populations decline (Ward and Krebs 1985, pp. 2821–2823; O'Donoghue *et al.* 1997, pp. 156, 159; Poole 1997, pp. 499–503). Subadult lynx disperse even when prey is abundant (Poole 1997, pp. 502–503), presumably to establish new home ranges. Lynx also make exploratory movements outside their home ranges (Aubry *et al.* 2000, p. 386; Squires *et al.* 2001, pp. 18–26).

The boreal forest landscape is naturally dynamic. Forest stands within the landscape change as they undergo succession after natural or human-caused disturbances such as fire, insect epidemics, wind, ice, disease, and forest management (Elliot-Fisk 1988, pp. 47–48; Agee 2000, pp. 47–69). As a result, lynx habitat within the boreal forest landscape is typically patchy because the boreal forest contains stands of differing ages and conditions, some of which are suitable as lynx foraging or denning habitat (or will become suitable in the future due to forest succession) and some of which serve as travel routes for lynx moving between foraging and denning habitat (McKelvey *et al.* 2000a, pp. 427–434; Hoving *et al.* 2004, pp. 290–292).

Snowshoe hares comprise a majority of the lynx diet (Nellis *et al.* 1972, pp. 323–325; Brand *et al.* 1976, pp. 422–425; Koehler 1990, p. 848; Apps 2000, pp. 358–359, 363; Aubry *et al.* 2000, pp. 375–378; Mowat *et al.* 2000, pp. 267–268; von Kienast 2003, pp. 37–38; Squires *et al.* 2004b, p. 15, Table 8). When snowshoe hare populations are low, female lynx produce few or no kittens that survive to independence (Nellis *et al.* 1972, pp. 326–328; Brand *et al.* 1976, pp. 420, 427; Brand and Keith 1979, pp. 837–838, 847; Poole 1994, pp. 612–616; Slough and Mowat 1996, pp. 953–958; O'Donoghue *et al.* 1997, pp. 158–159; Aubry *et al.* 2000, pp. 388–389; Mowat *et al.* 2000, pp.

285–287). Lynx prey opportunistically on other small mammals and birds, particularly during lows in snowshoe hare populations, but alternate prey species may not sufficiently compensate for low availability of snowshoe hares, resulting in reduced lynx populations (Brand *et al.* 1976, pp. 422–425; Brand and Keith 1979, pp. 833–834; Koehler 1990, pp. 848–849; Mowat *et al.* 2000, pp. 267–268).

In northern Canada, lynx populations fluctuate in response to the cycling of snowshoe hare populations (Hodges 2000a, pp. 118–123; Mowat *et al.* 2000, pp. 270–272). Although snowshoe hare populations in the northern portion of their range show strong, regular population cycles, these fluctuations are generally much less pronounced in the southern portion of their range in the contiguous United States (Hodges 2000b, pp. 165–173). In the contiguous United States, the degree to which regional lynx population fluctuations are influenced by local snowshoe hare population dynamics is unclear. However, it is anticipated that because of natural fluctuations in snowshoe hare populations, there will be periods when lynx densities are extremely low.

Because lynx population dynamics, survival, and reproduction are closely tied to snowshoe hare availability, snowshoe hare habitat is a component of lynx habitat. Lynx generally concentrate their foraging and hunting activities in areas where snowshoe hare populations are high (Koehler *et al.* 1979, p. 442; Ward and Krebs 1985, pp. 2821–2823; Murray *et al.* 1994, p. 1450; O'Donoghue *et al.* 1997, pp. 155, 159–160 and 1998, pp. 178–181). Snowshoe hares are most abundant in forests with dense understories that provide forage, cover to escape from predators, and protection during extreme weather (Wolfe *et al.* 1982, pp. 665–669; Litvaitis *et al.* 1985, pp. 869–872; Hodges 2000a, pp. 136–140 and 2000b, pp. 183–195). Generally, hare densities are higher in regenerating, earlier successional forest stages because they have greater understory structure than mature forests (Buehler and Keith 1982, p. 24; Wolfe *et al.* 1982, pp. 665–669; Koehler 1990, pp. 847–848; Hodges 2000b, pp. 183–195; Homyack 2003, pp. 63, 141; Griffin 2004, pp. 84–88). However, snowshoe hares can be abundant in mature forests with dense understories (Griffin 2004, pp. 53–54).

Within the boreal forest, lynx den sites are located where coarse woody debris, such as downed logs and windfalls, provides security and thermal cover for lynx kittens (McCord and Cardoza 1982, pp. 743–744; Koehler 1990, pp. 847–849; Slough 1999, p. 607;

Squires and Laurion 2000, pp. 346–347; Organ 2001). The amount of structure (e.g., downed, large, woody debris) appears to be more important than the age of the forest stand for lynx denning habitat (Mowat *et al.* 2000, pp. 10–11).

#### Future of Lynx Habitat

In 2003, we determined that climate change was not a threat to lynx within the contiguous U.S. DPS because the best available science we had at that time (Hoving 2001) was too uncertain in nature (68 FR 40083). Since that time, new information on regional climate changes and potential effects to lynx habitat has been developed (e.g., Gonzalez *et al.* 2007, entire; Knowles *et al.* 2006, pp. 4545–4559; Danby and Hick 2007, pp. 358–359), and this new information suggests that climate change may be an issue of concern for the future conservation of lynx because lynx distribution and habitat is likely to shift upward in elevation within its currently occupied range as temperatures increase (Gonzalez *et al.* 2007, pp. 7, 13–14, 19). This information, combined with the information in Hoving 2001, still needs to be evaluated further to determine how climate change might affect lynx and lynx habitat. We are evaluating this information in the 5-year review we are conducting for lynx.

At this time, we find it appropriate to designate critical habitat for the lynx in areas occupied by the species that currently contain the physical and biological features essential to the conservation of the lynx. Revisions to the critical habitat designation may be necessary in the future to accommodate shifts in the occupied range of the lynx. The revised critical habitat units in this rule include higher-elevation habitats that lynx would be able to continue to use if lynx distribution or habitat shifted upward in elevation.

#### Previous Federal Actions

For more information on previous Federal actions concerning the lynx, refer to the final listing rule published in the **Federal Register** on March 24, 2000 (65 FR 16052), the clarification of findings published in the **Federal Register** on July 3, 2003 (68 FR 40076), and the final rule designating critical habitat for lynx published in the **Federal Register** on November 9, 2006 (71 FR 66007). On July 20, 2007, we announced that we would review the November 9, 2006, final critical habitat rule after questions were raised about the integrity of scientific information used and whether the decision made was consistent with the appropriate legal standards. Based on our review of

the previous final critical habitat designation, we determined that the critical habitat designation was improperly influenced by then deputy assistant secretary of the Interior Julie MacDonald and, as a result, may not be supported by the record, may not be adequately explained, or may not comport with the best available scientific and commercial information. On January 15, 2008, the U.S. District Court for the District of Columbia issued an order stating the Service's deadlines for a proposed rule for revised critical habitat by February 15, 2008, and a final rule for revised critical habitat by February 15, 2009. Consequently, our proposed rule was signed on February 13, 2008, and submitted to the **Federal Register**. The proposed rule was subsequently published in the **Federal Register** on February 28, 2008 (73 FR 10860). We initiated a 5-year review of the status of lynx on April 18, 2007 (72 FR 19549).

#### **Summary of Comments and Recommendations**

We requested written comments from the public on the proposed revised designation of critical habitat for the lynx during two comment periods. The first comment period, associated with the publication of the proposed revised rule (73 FR 10860), opened on February 28, 2008, and closed on April 28, 2008. Five informal public meetings were held during this comment period in Washington (2), Minnesota (2), and Maine (1). We also requested comments on the proposed revised critical habitat designation, associated DEA, and draft environmental assessment during a second comment period which opened October 21, 2008, and closed on November 20, 2008 (73 FR 62450). During this comment period, we held a public hearing on November 7, 2008, in Kalispell, Montana, and one on November 13, 2008, in Cody, Wyoming. We contacted appropriate Federal, State, and local agencies; Tribes; scientific organizations; and other interested parties and invited them to comment on the proposed rule, DEA, and draft environmental assessment.

During the comment period for the proposed rule that was open between February 28, 2008, and April 28, 2008, we received a total of 338 comment letters. For the comment period open from October 21, 2008, to November 20, 2008, we received 184 comment letters and 17 comments at the two public hearings. Comments were received from Federal, State, Tribal and local governments, non-government organizations, private businesses, and individuals.

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from 17 knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from three of the peer reviewers. The peer reviewers had differing assessments of our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for the lynx, and we addressed them in the following summary.

#### **Peer Review Comments**

(1) *Comment:* Some peer reviewers commented that Federal lands should be included in the final rule due to their importance for lynx in the Distinct Population Segment area and because designation would provide clarification to land managers as to the importance of conserving those lands. The general public also submitted comments noting this issue.

*Our response:* We agree that that in all units except Unit 1 (where Federal lands make up a very small portion of the designation), Federal lands are an essential component of the revised critical habitat designation. We have designated critical habitat on Federal lands, as described in this final rule.

(2) *Comment:* Some peer reviewers and other commenters stated that our criteria (especially regarding evidence of occupancy and reproduction) for defining lynx critical habitat were too narrow or arbitrary, and resulted in omission of areas they consider important to lynx conservation, particularly the Selkirk and Kettle Mountains, the Southern Rockies/Colorado, and a slightly more extensive area in Minnesota. Other general comments addressed expanding the Greater Yellowstone Area (GYA) to include Grand Teton National Park and southwest Wyoming to protect a corridor for dispersal. Other comments noted the GYA should not be included in critical habitat because it is isolated from populations in Canada. Several peer reviewers noted that it has not been established that the Southern Rockies population is isolated, and therefore this area should be considered critical

habitat. Additionally, we received comments recommending we designate critical habitat according to the lynx recovery outline, which included the areas of concern noted above by peer reviewers in addition to areas considered secondary or peripheral to recovery.

General comments also were concerned with our criteria, asserting we should not restrict our designation solely to areas with confirmed evidence of the presence of reproducing lynx populations because lynx surveys have not been adequate to detect all reproducing lynx populations. General comments also questioned why critical habitat designation was restricted to areas of confirmed evidence of reproducing lynx populations and that our revised critical habitat designation should be extended to all occupied areas, areas currently managed for lynx, all habitats supporting snowshoe hares, and unoccupied areas in the historic range of the lynx.

*Our response:* Critical habitat is defined in section 3 of the Act as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Not all locations with records of lynx presence are essential for the conservation of the species; lynx are a wide-ranging species, and areas containing periodic records that lack evidence of reproducing populations are not considered essential to the species (see Criteria Uses to Identify Critical Habitat section below). In that section of the proposed and final revised critical habitat rules, we describe in detail the parameters used for delineating areas that contain the physical and biological features essential to the conservation of lynx, as required by the definition of critical habitat when considering occupied areas. We also determined that occupied areas containing the features essential to the conservation of lynx support the majority of recent lynx records and evidence of breeding lynx populations since 1995.

We relied on records since 1995 to ensure that the revised critical habitat designation is based on the best available data that most closely represents the current status of lynx in the contiguous United States and the

geographic area occupied by the species. We recognize that adequate surveys to confirm the presence of lynx populations have not occurred everywhere throughout the species' range; however, no information was provided to us during the public comment periods to suggest where there might be locations with undetected breeding populations that we should more closely evaluate for designation as critical habitat other than the areas we already considered. We determined that the additional areas suggested by commenters are secondary or peripheral areas not essential to the conservation of the lynx.

While reviewing our original critical habitat proposal published on November 9, 2005 (70 FR 68294), we determined that habitat in the GYA contained the physical and biological features essential to the conservation of lynx; in addition, the GYA has a long history of lynx presence and reproduction, and its geographic location connects lynx populations in Canada to lynx habitat in Colorado and Utah. However, we designated areas within the GYA that contain the physical and biological features essential to lynx in sufficient quantity and spatial arrangement as demonstrated by their consistent use by lynx. The entire GYA may be permanently or intermittently occupied by lynx. Lynx may expand into Grand Teton National Park and additional areas in southwestern Wyoming not in the current critical habitat designation, but we have no indication that the habitat contains the physical and biological features essential to the species in necessary quantities to support populations of lynx.

The methodology we used in defining areas for lynx critical habitat did not mirror that used for the lynx recovery outline, but did reflect the biological concepts considered in the recovery outline. We used the best scientific information available in determining which areas contained the features essential for the conservation of lynx. As explained on pages 10869 to 10871 of the proposal to revise critical habitat (February 28, 2008; 73 FR 10860), the areas we determined to be essential for the conservation of lynx do not include all the areas identified in the recovery outline. The criteria we used for determining areas essential to the conservation of lynx for the revised critical habitat designation are based on the critical habitat requirements of the Act, which are more selective than those used for delineating the recovery areas in the lynx recovery outline. The recovery outline more broadly

encompasses older records of lynx and gave less weight to direct connectivity with Canada, although in the recovery outline it was recognized that maintaining connectivity with Canadian lynx populations was important. Furthermore, the areas in the recovery outline were mapped conceptually, include substantial areas that do not contain the physical and biological features essential for lynx or are both unoccupied and not essential for lynx conservation, and therefore do not meet the definition of critical habitat. We refined our mapping for the purposes of designating critical habitat in order to meet the statutory requirements associated with critical habitat. As a result, areas determined to be essential to the conservation of lynx for the purposes of critical habitat did not include all the areas delineated in the recovery outline.

The Kettle Range in north-central Washington historically supported lynx populations (Stinson 2001, pp. 13–14), and boreal forest habitat within the Kettle Range appears to contain habitat for lynx; however, there is no evidence that the Kettle Range is currently occupied by a reproducing lynx population (Koehler 2005 entire); therefore, it did not meet the methodology we used for determining occupancy (see Criteria Used To Identify Critical Habitat in the proposed rule, February 28, 2008; 73 FR 10860). In addition, while the Kettle Range contains physical and biological features important to lynx, its spatial configuration and quantity of habitat do not appear to be sufficient to support a breeding population of lynx.

In the Southern Rockies, it is still uncertain whether a self-sustaining lynx population will become established as a result of Colorado's reintroduction effort (Shenk 2007, p. 18). We recognize that this reintroduction has been an effort to recover the lynx in Colorado; however, the Southern Rockies contain marginal habitat, are on the southern limit of the species' range, and have not been shown to support a breeding population of lynx. Therefore, we find that habitat in Colorado is not essential to the conservation of species.

(3) *Comment:* Some peer reviewers commented that wildfire prevention and suppression activities would not be precluded by critical habitat designation and that areas occurring within the wildland-urban interface (WUI) should not be excluded or exclusions should be limited to narrowly defined areas in the immediate vicinity of structures. Some general comments stated that WUI areas should be included in critical habitat because urban interface concerns could

be used as an excuse to allow developmental sprawl and meet timber harvest quotas. Commenters raised concerns that lynx habitat management would increase wildfire risk to forests and communities and requested that WUI areas be excluded from critical habitat designation. Other commenters noted that recent forest fires eliminated PCEs in some areas, so removal of those lands from critical habitat designation is justified. Other commenters requested that additional critical habitat be designated as buffers against fire-produced habitat loss.

*Our response:* Areas within the WUI are designated as lynx critical habitat as described in this rule. Wildfire is not thought to be a threat to lynx, and often results in beneficial effects when burned areas regenerate into lynx foraging habitat. As described in the final rule listing the lynx (March 24, 2000, 65 FR 16052), natural fire plays an important role in creating the mosaic of vegetation patterns, forest stand ages, and structure that provide good lynx and snowshoe hare habitat, particularly in the western Great Lakes region and in the western mountain ranges of the United States (Agee 2000, pp. 47–56).

Currently, WUI areas are defined by a variety of methods varying from the defensible space immediately surrounding structures out into forest areas within several miles of communities. The designation of critical habitat will not prohibit protection of defensible space around homes or the WUI. The regulatory provisions of critical habitat affect actions on Federal lands or with a Federal nexus. We expect that a majority of urban interface fuels projects would occur under the authority of the U.S. Forest Service (USFS). The Northern Rockies Lynx Management Direction (NRLMD) amending the National Forest's management plans to protect lynx addresses additional fuels reduction projects in areas within the WUI. In our analysis of the NRLMD (USFWS 2007, pp. 67–68) during section 7 consultation with the USFS, we determined that even with additional fuels reduction, the management in the NRLMD would provide for the recovery of lynx in these areas. Areas burned may still contain the physical and biological features essential to lynx; those areas still represent boreal landscapes supporting a mosaic of differing successional forest stages.

We are designating all habitat that meets the criteria for critical habitat, i.e., known to be occupied at the time of listing and containing the physical and biological features essential to the conservation of the species. Neither the

Act nor the implementing regulations provide for designating additional areas as buffers.

(4) *Comment:* Some peer reviewers suggested that the proposed revised rule incorrectly characterized lynx foraging habitat, particularly in the western critical habitat units, by failing to highlight the importance of mature, multistoried forest stands for lynx in this area.

*Our response:* Recent studies have shown that mature, multistoried stands are important foraging habitat for lynx in Unit 3, and they are likely important in Units 4 and 5 as well. We have added language to clarify this in the final rule.

(5) *Comment:* Some peer reviewers felt that statements in the proposed revised rule concerning the low sensitivity of lynx to forest management practices were misleading.

*Our response:* The statement in the proposed revised rule raised by commenters relates to “matrix habitat,” which is habitat that surrounds patches of foraging and denning habitat. Matrix habitat, by definition, is habitat that is crucial for preserving the ability of lynx to move between foraging and denning areas. However, the vegetative condition and structure of matrix habitat is not relevant to its value. For this reason, we do not foresee the need for prescriptive management for lynx in matrix habitat beyond maintaining the ability for lynx to move through this habitat to access other habitat types within a home range. We do recognize that lynx are sensitive to forest management practices in foraging and denning habitat and that forest management activities can have significant positive and negative impacts on lynx depending on the nature and timing and activities.

(6) *Comment:* Some commenters expressed that seasonal differences in lynx habitat preference is poorly articulated in the proposed revised rule. One commenter pointed out that lynx starvation in northwestern Montana during late winter-early spring is tied to the abundance and quality of winter habitat (mature, multistoried forest) and is the primary issue for lynx conservation in this area.

*Our response:* Lynx use a variety of habitat types and conditions during the year, which is why we drew the boundaries of the critical habitat units to include entire landscapes of boreal forest in a variety of successional stages that account for year-round habitat needs.

(7) *Comment:* Several peer reviewers and other commenters noted the important role that private lands play in lynx conservation and stated that the final rule should better define the

degree to which private lands contribute to lynx persistence.

*Our response:* Through the process of developing our proposed revised rule and subsequent modifications, we determined which lands contain features essential to the conservation of lynx. Private lands were included because of their value for lynx conservation. The relative contribution of private lands to lynx conservation varies between the five revised critical habitat units. Unit 1 is almost entirely comprised of private land, and therefore private lands provide almost the entire lynx habitat in this area. Conversely, Units 4 and 5 have relatively little private land, with Federal lands providing the bulk of lynx habitat. Units 2 and 3 have a mix of private, Federal, and State lands. We recognize the essential nature of private lands for lynx conservation where we are designating those lands as critical habitat. We have retained private lands in this final designation in all cases except where we determined, under section 4(b)(2) of the Act, that the benefits of excluding specific areas were greater than the benefits of including those areas in the designation (see Application of Section 4(b)(2) of the Act for more information).

(8) *Comment:* Some peer reviewers indicated that the statement in the proposed revised rule that snowshoe hares must be present over a large proportion of the landscape in order for that landscape to support lynx is incorrect. Reviewers cited the presence of lynx in the GYA and Northern Rockies as examples of lynx populations that exist despite the landscape not being dominated by forest types supporting snowshoe hares.

*Our response:* While we still highlight that the proportion of the landscape that supports snowshoe hares is important, we acknowledge that the proportion of the landscape that must support snowshoe hares in order to support lynx is not known with certainty. Lynx populations may persist in some mountainous areas despite snowshoe hares occurring in relatively small and isolated patches. We have clarified this point in this final rule.

(9) *Comment:* One peer reviewer recommended that the primary constituent element (PCE) identified for lynx be broadened to include multistoried stands of mature conifers with boughs that touch the snow surface, as these are important foraging habitats in Montana and elsewhere in the West.

*Our response:* We agree, and we have provided clarification to that portion of the PCE in this final designation.

(10) *Comment:* One peer reviewer stated that the definition of denning habitat in the proposed revised rule was not broad enough to capture all of the den sites used by lynx in Montana.

*Our response:* The description of denning habitat in the proposed revised rule captures the type of habitat most used by lynx for denning in the contiguous United States. We believe that our description adequately captures lynx denning habitat for the purposes of delineating critical habitat in Montana and in other critical habitat units.

(11) *Comment:* Several peer reviewers and one commenter provided views on the relative importance of Tribal lands for lynx conservation. Some thought we should have included some Tribal lands in the proposed revised rule. We received several comments, primarily from Tribes, recommending that all Tribal lands be excluded.

*Our response:* In accordance with Secretarial Order 3206, “American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act” (June 5, 1997); the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951); Executive Order 13175 “Consultation and Coordination with Indian Tribal Governments;” and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on Tribal lands are better managed under Tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Such designation is often viewed by Tribes as an unwanted intrusion into Tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

We contacted all Tribes potentially affected by the proposed revised designation and met with some of them to discuss their ongoing or future management strategies for lynx. Several Tribes subsequently submitted letters requesting exclusion based on their sovereign rights and concerns about the economic impact and effects on their ability to manage natural resources. As described in our proposed revised rule, we believe that conservation of lynx can be achieved without including Tribal lands within the revised critical habitat units. We determined that these lands are not essential to the conservation of lynx, but also, many of the Tribes have

management plans that provide for lynx habitat needs. The Tribal lands included in the proposed revised designation are found only in the Maine, Minnesota, and Montana units and the size of the areas are relatively small (approximately 223, 187, and 898 km<sup>2</sup>, respectively [86, 72, and 347 mi<sup>2</sup>]). We are excluding these Tribal lands from this final designation under section 4(b)(2) of the Act. See Exclusions Under Section 4(b)(2) of the Act for a discussion of why these lands have been excluded.

(12) *Comment:* Some peer reviewers and commenters recommended we use lynx analysis unit (LAU) boundaries as defined by some agencies to define the critical habitat boundaries, because they used habitat-based processes to identify the best lynx habitat.

*Our response:* We agree. After receiving numerous comments to this effect, we solicited lynx habitat data and LAU boundary data from Federal and State agencies, as well as private companies in and around the proposed revised critical habitat in Units 2, 3, 4, and 5. We then revised the critical habitat boundary to more closely reflect where lynx habitat occurs and followed LAU boundaries to the extent practicable (e.g., where doing so would not leave out significant lynx habitat or include significant areas of non-lynx habitat). These potential modifications were announced to the public when we announced the availability of the DEA and the draft environmental assessment (73 FR 62450) on October 21, 2008.

(13) *Comment:* Some peer reviewers questioned the need to consider climate change in a critical habitat designation. Other peer reviewers and commenters stated the need to designate critical habitat in high elevation habitats that are currently unsuitable for lynx occupancy but may become suitable with climate changes. Other commenters stated that climate change will render some proposed areas unsuitable; therefore, these areas should not be included in the designation. One commenter requested an analysis of climate change effects on each of the microclimates included in the Minnesota proposed critical habitat.

*Our response:* We acknowledge that climate change could change the suitability of lynx habitat in the future. However, we are required to designate critical habitat based upon the best available scientific and commercial data at the time that we finalize the designation. At this point in time, reliable projections of future climate in lynx habitat in the contiguous United States are not available. However, for mountain-dwelling species like lynx, we conclude that higher elevation habitat is

likely to become increasingly important in the face of climate changes. Designated critical habitat units include the highest-elevation habitat in the areas, and these areas would likely become more important to the extent lynx distribution and habitat shift upward in elevation as temperatures increase. High elevation habitat was included in the proposed designation, and we have determined it is appropriate to include these areas in the final designation.

#### *General Issues and Responses*

(1) *Comment:* We received numerous comments concerning possible restrictions imposed by critical habitat designation on economic, recreation, forest management, predator control, infrastructure, and energy transmission activities on private and public lands. Some commenters are concerned the designation provides a mechanism for increased third party litigation, and some asserted the designation of critical habitat constitutes an uncompensated taking of private property and is therefore illegal.

*Our response:* Critical habitat has a direct regulatory impact on the actions of Federal agencies only. Therefore, a critical habitat designation on private land has no regulatory impact on actions carried out by landowners unless they seek Federal funding or a Federal permit to carry out those actions. For example, if landowners must obtain a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) to carry out an action on their land, the Corps must consult under section 7 to evaluate the effects that the permitted activity may have on critical habitat. Even then, the designation may only have a substantial impact on the activity if it is likely to result in the destruction or adverse modification of the critical habitat. It is the responsibility of the Federal agency, not the private landowner, to initiate the consultation with the Service.

The Act prohibits Federal agencies from carrying out actions that would destroy or adversely modify critical habitat. A Federal action (e.g., winter recreation, energy transmission, mining, or road construction) that is not likely to cause destruction or adverse modification of lynx habitat may not be materially affected by a critical habitat designation. Federal action agencies must evaluate the potential effects of each action on its own merits. If a Federal action would result in destruction or adverse modification of lynx habitat, the Service would suggest reasonable and prudent alternatives to

avoid the destruction or adverse modification of critical habitat.

Section 4(a)(3) of the Act requires that critical habitat be designated for listed species. The designation of critical habitat for lynx may increase the number of lawsuits brought forward by citizens opposed to certain actions. Although this is possible, these lawsuits may only have merit if the Federal agency that is funding, authorizing, or carrying out the action does not adequately consider its potential effects to critical habitat, or consult, as appropriate, with the Service in making its final decision.

The promulgation of a regulation does not take private property unless the regulation denies the property owners all economically beneficial or productive use of their land. Further, in accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we analyzed the potential takings implications of designating critical habitat for the lynx in a takings implications assessment (TIA), which is available on request. The conclusion in the TIA was that the possibility for take of private property due to designation of critical habitat for lynx is remote.

(2) *Comment:* We received several comments stating that the proposed critical habitat designation area should be smaller, or that no critical habitat should be designated. These comments contained little explanation to support the recommendations. Other comments indicated that the area designated for critical habitat in Minnesota was too small to be significant to lynx survival.

*Our response:* Section 4(a)(3) of the Act requires that critical habitat be designated for listed species. The lynx was listed as a threatened species under the Act on March 24, 2000 (65 FR 16052). Under section 4(b)(2), the Act requires that a critical habitat designation be made on the basis of the best scientific data available and after taking into consideration the economic impact and any other relevant impact of specifying any particular area as critical habitat. In order for us to consider excluding a particular area from a critical habitat designation based on economic or other relevant impacts, we need geographic specificity and supporting documentation that can be analyzed. The comments did not provide this information, making analysis for exclusion or explanation of inclusion impossible. In general, after considering the data available, we proposed areas for critical habitat that represented the breadth of ecological settings and sufficient number of

populations to satisfy the biological requirements of the lynx and the statutory requirements of the Act.

We believe that the 8,200 mi<sup>2</sup> (21,238 km<sup>2</sup>) of land in Minnesota proposed for critical habitat is a significant part of the designation. The high-quality lynx habitat proposed in the Minnesota unit comprises 20 percent of the total area proposed for critical habitat in the contiguous United States. In addition, the Minnesota unit is the only area in the Great Lakes region with strong, long-term evidence of the persistence of lynx populations. As we explained in detail in the Criteria Used To Identify Critical Habitat section in the proposed rule, the inclusion of the Minnesota unit is important in applying the conservation principles of representation, resiliency, and redundancy to the critical habitat designation for lynx. Focusing lynx conservation efforts, including critical habitat designation, on areas with a long-term presence of reproducing lynx and connectivity to populations in Canada has the greatest chance of ensuring the continued persistence of lynx in the contiguous United States.

(3) *Comment:* One commenter indicated that indirect effects of State and local regulations may follow critical habitat designation.

*Our response:* We recognize that State and local governments have the authority to promulgate regulations or local rules related to a critical habitat designation. However, listed species and their habitats are protected by the Act regardless of whether they are in areas designated as critical habitat. The draft economic analysis (DEA) addressed the potential for newly promulgated regulations or rules resulting from our critical habitat designation; none were anticipated. Therefore, we do not anticipate additional regulatory restrictions as a result of State or local regulations.

(4) *Comment:* Comments included concerns about increased threats to lynx and lynx habitat due to development, vegetation management by Federal agencies that destroys snowshoe hare habitat, and the introduction and proliferation of wolves.

*Our response:* Critical habitat designation identifies the specific areas within the geographical area occupied by the species that contain the physical and biological features essential to the conservation of the species, and which may require special management considerations or protection. Designation of critical habitat helps focus conservation and recovery activities. The designation of critical habitat by itself does not achieve conservation or recovery of a species,

nor does it prohibit development or forest management activities that alter snowshoe hare habitat. The Act does not automatically restrict all uses of critical habitat, but only imposes restrictions under section 7(a)(2) on Federal agency actions that may result in destruction or adverse modification of critical habitat. Each Federal action, including development, permitting, funding, and forest management, would be evaluated by the involved Federal agency, in consultation with the Service, in relation to its impact on the critical habitat. If, after evaluation and consultation, it is concluded that a proposed action is likely to result in the destruction or adverse modification of critical habitat, the Service is required to suggest reasonable and prudent alternatives to the action that would avoid the destruction or adverse modification of critical habitat.

To a private property owner, the designation of critical habitat becomes important only when undertaking an activity that is authorized, funded, or completed by a Federal agency. Conservation actions, however, are not limited to Federal agencies. Lynx are protected on Federal and non-Federal lands through prohibitions and constraints of section 9 of the Act, regardless of critical habitat designation. Although consultation with the Service is not specifically stated in the Act, non-Federal activities, including development and forest management, may require permitting by the Service if an action would result in a taking of the species as described under section 9 of the Act.

Other predator species could affect lynx negatively by competing for resources, direct predation of lynx, or both. Lynx are vulnerable to competition for prey because of a selective diet that relies heavily on snowshoe hare. Wolf prey competition is unlikely based on the minor inclusion of small mammals in their diet. Wolves could have a positive influence on lynx by killing coyotes that compete with lynx for rabbits and hares. Predation of lynx by wolves has not been identified as a threat to the species.

(5) *Comment:* We received several comments requesting additional hearings, public meetings, or an extension of the public comment period. Some commenters stated that public participation was precluded by not adequately notifying landowners about the proposal and not having a completed economic analysis at the time the proposed rule was published. Some commenters felt that access to listing documents, including maps, was not convenient and that the **Federal**

**Register** was an inadequate mechanism for notifying the public of the proposal.

*Our response:* We made a concerted effort to provide public notice of this rulemaking. Because of the large scope of the proposed designation it was not possible to contact each landowner. However, we issued a widely-disseminated news release regarding our proposal, and published legal notices in major newspapers in areas involved in the proposal. We published **Federal Register** notices, including the critical habitat proposal, reopening of the comment period, and notice of availability of draft documents. We sent hundreds of letters, cards, and e-mails to State and Federal agencies, Tribal governments, local governments, private individuals, private companies, non-government organizations, and elected officials announcing the proposal, document availability, and public meetings and hearings. We also issued press releases concurrent with **Federal Register** notice announcements. A web page of lynx critical habitat materials and information has been maintained at <http://mountain-prairie.fws.gov/species/mammals/lynx/criticalhabitat.htm>.

We received several requests for public hearings during the initial comment period for the proposed rule. Hearings were conducted as required under section 4(b)(5)(E) of the Act. Public hearings on the published proposal were held on November 7, 2008, in Kalispell, Montana, and November 13, 2008, in Cody, Wyoming. Open houses and meetings on the published proposal were held on March 25, 2008, Duluth, Minnesota; April 23, 2008, Bloomington, Minnesota; May 20, 2008, Grand Marais, Minnesota; March 25, 2008, Twisp, Washington; and April 2, 2008 and November 10, 2008, Old Town, Maine. In the proposed rule we provided contact information for four Service Field Offices for anyone seeking further information on the proposed revised critical habitat designation. Therefore, we believe that we made a conscientious effort to reach all interested parties and provide avenues for them to obtain information concerning our proposal and supporting documents.

We recognize the scale of the maps published in the **Federal Register** made it difficult to accurately identify whether particular parcels of land were included within the proposed designation. However, the descriptions that began on page 10881 of the proposed rule (73 FR 10860; February 28, 2008) were provided to assist the public in understanding exactly which lands were proposed as critical habitat.

We acknowledge that a draft economic analysis (DEA) was not available to the public at the time of publishing the proposed rule in the **Federal Register**. We considered it important to release the proposed rule to the public for review and comment as soon as possible. The DEA was released for public review as soon as it was completed. The comment period was then reopened for 30 days, and the public had an opportunity to submit comments on both the proposed rule and the accompanying DEA.

(6) *Comment:* A commenter stated that the proposed critical habitat rule misrepresented the legal boundaries of Cook County townships in Minnesota leading to a lack of citizen participation. A commenter stated that we misrepresented critical habitat effects on private property, specifically that designation imposes a take permit system for non-Federal activities on private land, thereby limiting public participation and violating the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*).

*Our response:* We disagree on both issues. We believe that detailed and sufficient information was provided to the public that clearly delineated boundaries for critical habitat. The proposal included a statement on page 10882 that critical habitat does not include towns or populated areas as they now exist. The term “now exist,” is a function of the municipal boundaries that are not delineated by the Service but established, in most cases, by non-Federal, local entities. Numerous areas in Minnesota, including in Cook County, are not included in the critical habitat area. More detailed information on the boundaries of the proposed critical habitat was included on pages 10881 through 10895, with specific delineations for Minnesota on pages 10886 and 10887.

Regulatory implications for private lands were clearly stated in the proposed rule. The designation of critical habitat for the lynx does not affect land ownership or establish a conservation area, does not allow the government or public to access private lands, and does not require (although it encourages) implementation of restoration, recovery, or enhancement measures by a landowner for the lynx. In situations where a landowner seeks Federal agency funding or authorization of an activity that may affect the lynx or its critical habitat, the Federal agency is responsible for complying with section 7 of the Act to determine the impacts of its action on the lynx and its critical habitat. If Federal authorization or

funding of the proposed private action is likely to result in the destruction or adverse modification of lynx critical habitat, the Service and the Federal action agency, in coordination with the landowner as an applicant, would cooperate in the development of a reasonable and prudent alternative that avoids that outcome and meets other specific criteria set forth in the regulations. The designation of critical habitat does not institute a permit requirement for the private landowner whose activity results in the take of a listed animal species. Any appropriate permitting became necessary at the time the lynx was listed in 2000.

As stated in the response to Comment 5, we made a conscientious effort to reach all interested parties and provide avenues for them to obtain information, including an environmental assessment for NEPA compliance, and submit comments concerning our proposal.

(7) *Comment:* Many commenters did not believe that the lynx qualified as a threatened species. Some commenters thought the species should be delisted, and others thought it should be listed as endangered. Some commenters believe that designation of critical habitat is necessary to recover lynx, but that designation of critical habitat prior to completion of a lynx recovery plan or other lynx conservation guidance is premature. Other commenters were concerned about the effectiveness of critical habitat designation and the ineffectiveness of single species management. Commenters stated that critical habitat designation was in conflict with Federal mining laws, and that other Federal agencies were not complying with the Endangered Species Act, Multiple-use Sustained-yield Act of 1960 (16 U.S.C. 528 *et seq.*), and others. Some commenters stated that the 2005 critical habitat rule was supported by the record and should not be changed.

*Our response:* The lynx was listed as a threatened species under the Act on March 24, 2000 (65 FR 16052). Section 4(a)(3) of the Act requires that critical habitat be designated for listed species. This rule addresses the required critical habitat designation; listing actions are not part of the critical habitat rule.

On January 15, 2008, the U.S. District Court for the District of Columbia ordered the Service to complete a final rule for revised critical habitat by February 15, 2009. A recovery plan need not be completed before critical habitat is designated, but is useful in guiding the designation if one exists. The drafting and finalization of a recovery plan for lynx has not been feasible due to work load and economic constraints. However, the lynx recovery outline was

used to guide the proposed revised lynx critical habitat designation. The areas we considered in our methodology for defining critical habitat for the lynx did not mirror the exact areas identified in the recovery outline, but did reflect the biological concepts considered important in the recovery outline. We used the best science available in determining areas that contained the features essential for the conservation of lynx. Designation of critical habitat does not in itself bring about recovery, but designation of critical habitat can help focus conservation and recovery activities for listed species by identifying areas essential to conserve the species. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in subsequent recovery and management plans.

We agree that research is important, and that managing for a single species may not provide the maximum benefit for a biological community or an ecosystem as a whole. The purpose, however, of this rulemaking is to comply with a directive of the Act to designate areas with the biological and physical features necessary for the conservation of the lynx.

An analysis of the possible contradictions of statutes or the compliance of Federal agencies with relevant or unrelated laws is not within the purview of this critical habitat rule.

While some believe that our previous designation was satisfactory, we reviewed the previous critical habitat rule for the lynx (71 FR 66007; November 9, 2006) after questions were raised about the integrity of the scientific information used and whether the decision made was consistent with the appropriate legal standards. We determined that it was necessary to revise the critical habitat designation based on that review.

(8) *Comment:* Some commenters questioned the presence of primary constituent elements (PCEs) for lynx in specific areas proposed as critical habitat, and recommended that the proposal be refined. Specific areas cited included the shore of Lake Superior, State of Wyoming, existing and proposed mining areas, and matrix habitat. Other commenters asserted that the boundaries we used (such as the 4,000-foot (ft), 1,219-meter (m)) elevation contour or highways were arbitrary and overly broad.

*Our response:* We reviewed available maps, peer and public comments, and biological information received during the public comment period. Subsequently, portions of units that did not contain the PCE or where

development was concentrated were removed from the final designation. Any developed areas and the land on which structures are located inside critical habitat boundaries are excluded from critical habitat designation as is described in this final rule. In some areas, unit boundaries were expanded to incorporate adjacent lynx habitat that had been inadvertently left out of the proposed critical habitat.

Designated critical habitat areas in Wyoming (Greater Yellowstone Area (GYA)—Unit 5) have confirmed records of reproducing lynx and contain lynx habitat similar to the Northern Rockies. Lynx are generally associated with the Rocky Mountain Conifer Forest vegetation class in Wyoming, which is dominated by subalpine fir, Engelmann spruce, and lodgepole pine. As described in detail in the proposed rule on page 10866, lynx habitat in the GYA is typically found in a widely scattered mosaic of matrix habitat. Individual lynx adjust their home range to incorporate land that is not typical lynx foraging habitat, but is used primarily for travel. The need for matrix habitat designated as critical habitat is most pronounced in the GYA, but matrix habitat is important in all designated areas to retain unimpeded movement of lynx between patches of suitable foraging and denning habitats.

Roads and other human-made structures were used as boundaries for critical habitat where they clearly delineated areas with confirmed records of lynx reproduction and the presence of PCEs. In the Washington State Unit, the 4,000-ft (1,219-m) elevation contour is used to delineate the critical habitat boundary because the features essential to the conservation of lynx, the majority of lynx records, the evidence of reproduction, and the boreal forest types are found above 4,000 ft in Washington State.

*(9) Comment:* Comments were received questioning why changes were made from the previous (2005) rule. Specific changes noted were the identification of lands requiring special management; inclusion in the current proposed rule of lands previously exempted under sections 4(b)(2) and 3(5)(a) of the Act; and the expansion of critical habitat beyond the boundaries of Voyageurs National Park and the Boundary Waters Canoe Area in Minnesota.

*Our response:* As explained in the “Previous Federal Actions” section on page 10863 of the February 28, 2008 proposed rule, we determined that it is necessary to revise the November 9, 2006, final critical habitat rule as a result of questions that were raised

about the integrity of scientific information used in the 2006 designation and whether the decision made was consistent with the appropriate legal standard. As a result, we reconsidered all the lands that were designated, lands that were not designated under section 3(5)(a) of the Act, and lands excluded under section 4(b)(2) of the Act in the 2006 designation.

*(10) Comment:* Some commenters indicated that designation provides little or no additional benefit beyond the listing itself, and that critical habitat is not necessary because conservation occurs through other existing means such as the Lynx Conservation Assessment and Strategy (LCAS), National and State Forest Plans, and other actions. Other commenters expressed their support for critical habitat because the designation provides for educational and research opportunities, recreation, and economic and forest management benefits.

*Our response:* Compliance with section 4(a)(3) of the Act necessitates that critical habitat be designated for listed species. It is true that a species and habitat upon which it depends are protected under provisions of the Act whether critical habitat is designated or not. However, a critical habitat designation identifies lands on which are found the physical and biological features essential to the conservation of the species that may require special management considerations, and areas outside the geographical area occupied by the species at the time of listing that are essential to the conservation of the species. The identification of these essential areas is important to guide management and provide for the recovery of the species.

As explained in detail in the Benefits of Designating Critical Habitat section of this final rule, the consultation provisions under section 7(a) of the Act constitute the regulatory benefits of critical habitat. Federal agencies must consult with the Service on discretionary actions that may affect a listed species, and in addition, analyze the effects of an action to critical habitat. The analysis of the effects to critical habitat is a separate and different analysis from that of the effects to the species, and may provide greater regulatory benefits to the recovery of a species than listing alone.

Since the lynx was proposed for listing in 1999, the U.S. Forest Service (USFS), Bureau of Land Management (BLM), and National Park Service (NPS) have been instrumental partners with the Service in conservation and recovery of the lynx, and in the

development of the Lynx Conservation and Assessment Strategy (LCAS) (Reudiger *et al.* 2000). The LCAS constitutes the best available information on conserving lynx, and identifies potential risk factors to lynx and lynx habitat and management guidance to reduce these risks. The Service and USFS are signatories to an agreement protecting lynx on national forest lands until all Land Resource Management Plans (LRMPs) for the relevant forests are amended to include the direction consistent with the LCAS. The National Forests in Units 2, 3, and 5 have all amended their forest plans, and the Okanogan-Wenatchee National Forest in Unit 4 is in the process of amending its LRMP. No Federal lands are included in the critical habitat designation in Unit 1.

During the critical habitat designation process, we evaluated national forest areas to determine if they meet the definition of critical habitat (i.e., if they contain physical or biological features essential to conservation of the lynx and if these essential features may require special management or protection). National forest lands included in this final rule were found to have the essential features for lynx. The essential features on lands covered by management programs or plans that have been revised or amended to adopt the LCAS do require special management or protection, and therefore meet the definition of critical habitat in section 3(5)(A) of the Act.

Lands proposed as critical habitat can be excluded from a final critical habitat designation under section 4(b)(2) of the Act where conservation is addressed by existing protective actions and the benefit of exclusion outweighs the benefit of inclusion, unless the failure to designate such area will result in the extinction of the species concerned. The “Benefits of Excluding Non-Federal lands with Conservation Partnerships” section in this rule details our analysis of excluding or including non-Federal lands.

Critical habitat designation serves to educate the public and State and local governments regarding the potential conservation value of certain areas. Clearly delineating areas helps focus and promote conservation direction and actions. Critical habitat educational benefits, in general, may be redundant with other actions requiring significant public involvement, e.g., habitat conservation plans (HCPs). It is not possible to state broadly that research, recreation, and economies are benefitted by critical habitat designation. A listing under the Act itself focuses research on the species and habitat needs.

Recreation benefits are relative to the type of activity and location. Recreation or aesthetic benefits may come in the form of unquantifiable personal enjoyment or satisfaction. Ancillary benefits and costs to local economies were considered and described in the DEA to the extent data were available.

(11) *Comment:* Some commenters questioned the adequacy of the Environmental Assessment (EA) and other aspects of our compliance with NEPA. They felt that the draft EA is lacking information, does not address recovery, and does not address the full range of alternatives. Some recommended an alternative that includes all core areas. Some felt that we should prepare an Environmental Impact Statement (EIS) on this action.

*Our response:* We have complied with the requirements of NEPA for this critical habitat designation for lynx. An EIS is required only in instances where a proposed Federal action is expected to have a significant impact on the human environment. We prepared a draft EA and a DEA of the effects of the proposed designation to determine whether designation of critical habitat would have significant impacts. A notice of availability for public review of the draft EA and DEA was published on October 21, 2008 (73 FR 62450). The draft documents have been available since that date on our Web site and by request from the Service's Montana Field Office. We accepted public comment for 30 days after the posting. Following consideration of public comments, we prepared a final EA and determination that critical habitat designation does not constitute a major Federal action having a significant impact on the human environment. That determination is documented in our Finding of No Significant Impact (FONSI). Both the final EA and FONSI are available on our Web site (see **ADDRESSES** section of this rule).

The EA was prepared for this rule to identify alternatives, identify and analyze significant issues, and determine whether additional analysis was required in an EIS. Two alternatives were considered in the EA: the No Action (Baseline) Alternative and the Proposed Action. Two other alternatives were considered but not brought forward for analysis. The two alternatives not considered further were: (1) Critical habitat designation of all areas within the geographic range of the lynx in the contiguous United States, and (2) designation of all recovery areas (including core areas) as described in the lynx recovery outline. These alternatives were not carried forward because the Act specifies that, except in

circumstances determined by the Secretary, critical habitat shall not include the entire geographic area that can be occupied by the species, and the recovery outline was not analyzed as an alternative because it did not meet the criteria for critical habitat defined in the proposed rule. For example, the recovery outline identified the Kettle range in Washington State as a core area, but the area has no recent, verified evidence of the presence of a breeding lynx population, and does not meet the criteria as defined in the proposed rule. We developed the proposed alternative using the best available scientific information to reflect the biological concepts considered important in the recovery outline, and included identified core areas that have verified records of long-term lynx occupation and reproduction.

The designation of critical habitat itself is not a recovery action, but identifies geographic areas that have the primary biological and physical elements necessary for conservation of lynx and that may require special management. We recognize that designation of critical habitat may not include all of the habitat area that may eventually be determined to be necessary for the recovery of a species. Critical habitat designations made on the basis of the best available information will not control the direction and substance of future recovery plans or planning efforts.

(12) *Comment:* We received a request to clarify that reservoir water bodies are not included in the critical habitat designation.

*Our response:* The clarification that reservoirs are not included in the designation has been included in the final rule.

(13) *Comment:* Several commenters recommended that we work with Canada to limit trapping in Canada to conserve lynx and preclude the need for critical habitat designation.

*Our response:* We agree that, where applicable, international cooperation on conservation issues is important. Lynx, as listed in the contiguous United States, are considered a unique conservation entity. At this time, the lynx is not listed as an endangered or threatened species in Canada. Lynx are harvested in Canada, and managed under local and provincial game laws that include quotas determined by the population status. At the time of listing in 2000, a lack or inadequacy of regulatory mechanisms and habitat alteration were considered the primary risks to the persistence of lynx in the contiguous United States.

Overutilization by trapping and hunting

was not considered a major threat to the species (65 FR 16078), and limiting trapping would not preclude the need to designate critical habitat.

(14) *Comment:* According to the Maine Department of Inland Fisheries and Wildlife, the Maine Unit was defined using many unverified records. Some lynx locational information given to the Service by the Department did not meet the accepted verification criteria as stated in the proposed critical habitat rule (page 10870). The critical habitat designation in Maine would be smaller if only verified records were used.

*Our response:* As we explained on pages 10869–10870 of the proposed rule (73 FR 10860, February 28, 2008), we used snow track records to determine the area occupied by lynx in Maine, which are considered unverified records, in addition to other types of verified records, because of the stringent protocols used in confirming the tracks as lynx and the minimal number of species in Maine with which lynx tracks could be misidentified (McCullough 2006).

(15) *Comment:* Some commenters thought that the Lynx Conservation Assessment and Strategy (LCAS) (Ruediger *et al.* 2000), Northern Rockies Lynx Management Direction, and the Southern Rockies Lynx Management Direction are inadequate as conservation tools and therefore should not be used as a justification to exclude these areas from the designation. Specifically, the LCAS does not provide for landscape continuity.

*Our response:* Lands covered by the LCAS are not being excluded from critical habitat designation. The LCAS (Ruediger *et al.* 2000) assists Federal agencies in planning activities and projects in ways that benefit lynx or avoid adverse impacts to lynx and lynx habitat. Conservation agreements between the Service and the USFS and BLM commit the land management agencies to using the LCAS in determining the effects of actions on lynx until Management Plans are amended or revised to adequately conserve lynx. At the time it was written, the LCAS provided the highest level of management and protection for lynx. Since the LCAS was written, new information has become available and research continues that should be taken into account by land managers. Some of this new information was taken into account by the USFS in revising plans under programmatic plan amendments (Northern and Southern Rocky Mountain Lynx Amendments). All National Forests in the critical habitat designation, except the Okanogan-Wenatchee in Washington State,

amended their LRMPs to include the newer lynx direction. The amendment process for the Okanogan-Wenatchee is under way. We analyzed the amendment actions and determined that the management under them would provide for the recovery of lynx in the geographic areas covered (USFWS 2007, entire).

The identified National Forest lands in the final rule were found to have the essential features for lynx. The essential features, on lands covered by management programs or plans that have been revised or amended to adopt the LCAS, do require special management or protection, and therefore meet the definition of critical habitat pursuant to section 3(5)(A) of the Act. In addition, the consultation provisions under section 7(a) of the Act constitute the regulatory benefits of critical habitat. Federal agencies must consult with the Service on discretionary actions that may affect a listed species, and, in addition, analyze the effects of an action to critical habitat. The analysis of the effects to critical habitat is a separate and different analysis from that of the effects to the species, and considers the effects of an action on the larger landscape scale of the critical habitat unit as a whole.

*(16) Comment:* Some commenters indicated that the proposal is based on past survey results and not on biological or ecological principles. In addition, some indicated that past records of lynx presence are insufficient in identifying occupied areas, and that lynx survey results are inconsistent from State to State and from agency to agency.

*Our response:* As required by section 4(b)(2) of the Act, we base our critical habitat designations on the best scientific data available. Our criteria for determining the areas occupied by lynx are described in the "Criteria Used To Identify Critical Habitat" section on pages 10869–10870 of the proposed rule. We used available data providing verified evidence of the occurrence of lynx and evidence of the presence of breeding lynx populations as represented by records of lynx reproduction. We find that evidence of breeding populations is the best way to verify that the PCEs are present in sufficient quantity and spatial configuration to meet the needs of the species, and qualify as critical habitat. We focused on records since 1995 to ensure that the critical habitat designation is based on the data that most closely represents the current status of lynx in the contiguous United States and the geographic area occupied by the species. We restricted the

available lynx occurrence dataset by accepting only verified recent lynx records, because we wanted reliable data for the purposes of evaluating areas and features for critical habitat designation. As described in our response to Comment 14, above, in Maine we also accepted unverified records in the form of snow tracks because of the stringent protocols used in confirming the tracks as lynx and the minimal number of species from which lynx tracks could be misidentified in Maine.

*(17) Comment:* We received comments requesting clarification of the criteria used for determining a "self-sustaining population" in the proposed rule, and why definitions for "self-sustaining populations" differ from our Environmental Assessment for the rule and other Federal agency conservation strategies such as the LCAS and National Forest Plans.

*Our response:* Our use of the term "self-sustaining population" in the proposed rule relates to populations that are able to maintain a stable or naturally oscillating population structure composed of breeding individuals derived from wild mating and births (rather than introduced animals). A population that has demonstrated robustness to natural fluctuations in prey abundance is a key to determining that it is established. Our use of the term "self-sustaining" may differ from other agencies' use due to the different objectives for conservation strategies. The draft environmental assessment contained a section on Criteria for Defining Essential Habitat that deferred to the proposed critical habitat rule; a definition of "self-sustaining" or "occupied" was not provided in that document. The objective of the LCAS is to achieve conservation of the species on USFS lands while maintaining other uses of forest lands important to the mission of the USFS. The objective of critical habitat is to identify the habitat that is occupied by the species or essential to its conservation, that contains the physical and biological features essential to the species, and that may require special management considerations or protection.

*(18) Comment:* Some commenters thought that private or State lands should be included or excluded based on conservation and management agreements.

*Our response:* We determined that the benefit of excluding State lands in Washington that are managed under the Washington Department of Natural Resource's (DNR) Lynx Habitat Management Plan and lands in Maine that are enrolled under the Healthy

Forest Reserve Program (HFRP) outweighs the benefit of designating them as critical habitat, as allowed under section 4(b)(2) of the Act. As we describe in detail in the Exclusions Under section 4(b)(2) section of this rule, the Washington DNR Lynx Habitat Management Plan and the HFRP in Maine provide certainty that the physical and biological features essential to the conservation of lynx will be conserved. These programs are in place, funding has been committed, and the specific intent of both programs is the conservation and management of lynx; as a result we have a high degree of certainty that both programs will be implemented and that they will be effective in conserving lynx habitat.

We are not excluding any other areas from the designation except Tribal lands, which we are excluding pursuant to Secretarial Order Number 3206, as described in the proposed rule. We have determined that no other lands will be excluded. We considered exclusions for industrial forest lands in Maine and Montana included in draft conservation agreements, lands owned by Plum Creek Timber Company in Maine and Montana, and private and county lands in Minnesota. We value the partnerships we have with these various landowners, and recognize that their cooperation will be necessary to achieve recovery of the lynx. We are not excluding these lands due to the lack of certainty that the plans would effectively conserve the physical and biological features essential to lynx. Additionally, a possibility exists that section 7(a)(2) consultation on a future project having a Federal nexus on any of these lands might result in a determination that an action would result in the destruction or adverse modification of lynx critical habitat.

We are not excluding Montana Department of Natural Resources and Conservation lands in Montana that are under a draft Habitat Conservation Plan for lynx and other listed species, nor are we excluding Plum Creek lands in Maine that are part of the proposed Moosehead Lake Concept Plan, because both of these efforts are still in development and there is a lack of certainty that either effort will be completed. However, we recognize the extensive planning and development that have already been invested in both of these efforts to achieve conservation of lynx and other species.

*(19) Comment:* Linkage corridors are important to protect.

*Our response:* We agree that providing protection for travel and dispersal are important for maintaining lynx populations over time. Critical habitat is

designated for the conservation of the primary constituent element (PCE) essential to the conservation of the lynx and necessary to support lynx life history functions. The PCE comprises the essential features of the boreal forest types that provide, for example, prey, reproduction and denning habitat, and snow conditions that give lynx their competitive advantage. Critical habitat provides habitat connectivity for travel within home ranges, and exploratory movements and dispersal within critical habitat units.

Critical habitat in the final rule was delineated to encompass occupied areas with verified reproduction and containing features essential to the conservation of the lynx to provide connectivity within the particular regional unit and to maintain direct connectivity with lynx populations in Canada. Lynx populations in the contiguous United States are influenced by lynx population dynamics in Canada, and many of these populations in Canada are directly interconnected with U.S. populations; therefore, retaining connectivity with the larger lynx population in Canada is important to ensuring long-term persistence of lynx populations in the United States.

*(20) Comment.* At a public meeting for the lynx critical habitat in Spokane, the Service stated that the actual “core” for lynx is in Canada. This contravenes our proposal that there are at least five “critical” or “core” areas in the northern United States.

*Our response:* The bulk of the lynx population is in Canada, which can be considered the “core” of its range. However, in the lynx recovery outline (Service 2005), we use the term “core” to define the areas with the strongest long-term evidence of the persistence of lynx populations in the contiguous United States. The recovery outline, however, was not meant to address critical habitat designation and did not identify the primary constituent element for lynx that require special management. For the purposes of critical habitat designation, we refrained from using the term “core areas” to avoid confusion with the definitions used in the recovery outline (see the Relationship to Recovery Outline section). In the Criteria Used to Identify Critical Habitat section of the final rule, we clarified how the areas proposed were determined. We referred to the recovery outline to identify the different geographic areas important to the persistence of reproducing populations of lynx in the contiguous United States. We then focused our strategy on boreal forest landscapes of sufficient size to encompass the temporal and spatial

changes in habitat and snowshoe hare populations to support interbreeding lynx populations or metapopulations over time. We also considered the need for connectivity among habitat patches within a geographical area, and connectivity with the larger, more robust Canadian lynx populations. Based on the defined criteria for critical habitat, the units roughly coincide with five of the six “core” areas identified in the recovery outline.

*(21) Comment:* Plum Creek Timber Company requested that their properties in Montana and Maine be excluded from the designation based on multiple legal and policy grounds, including: (1) Landowner conservation agreements that Plum Creek is party to provide habitat protections beyond what would be achieved by critical habitat designation; (2) economic impacts to Plum Creek warrant exclusion under Section 4(b)(2) of the Act; and (3) technical and legal reasons, such as that some of the Plum Creek lands in the designation are not lynx habitat or do not exhibit the primary constituent element (PCE), and therefore were erroneously included in the proposed rule.

*Our response:* We respond to Plum Creek’s comments in a number of different places in this rule. We analyzed the benefits of exclusion and inclusion of Plum Creek lands based on their proposed participation in private lands draft agreements (Maine Forest Products Council and Montana Partnership) in the Exclusions under Section 4(b)(2) of the Act section of this rule. We determined that the benefits of exclusion do not outweigh the benefits of inclusion of Plum Creek lands, and that the lands should remain in the critical habitat designation. Our economic analysis found no basis for excluding Plum Creek lands due to economic factors, including impacts associated with development at Moosehead Lake in Maine. Little economic impact, to Plum Creek and other private landowners, would exist due to the designation of critical habitat. Significant economic impacts to Plum Creek existed due to the listing of lynx; however these impacts would occur regardless of critical habitat designation. Our specific responses to Plum Creek’s comments on our economic analysis can be found in comments #14, 15, 20, 21, and 32 below.

We also evaluated Plum Creek’s request to exclude lands based on its willingness to develop a habitat conservation plan for its proposed Moosehead Lake development. We acknowledge that Plum Creek has experience creating and implementing

conservation plans, but this experience does not justify an exclusion where the State of Maine’s re-zoning has yet to be completed and no specific subdivision or development plans have been submitted to us for review. Given that the development of a habitat conservation plan and an incidental take permit has not been completed, we cannot rely on it as a basis for exclusion. Finally, we note that Plum Creek, like others who have requested exclusions, participates in forest certification programs, such as Sustainable Forestry Initiative (SFI). Although participation tends to demonstrate a commitment to resource stewardship, we were not provided with required endangered species or lynx management plans for review. Therefore, we were unable to determine, with reasonable certainty or specificity, the degree to which land management practices currently being employed benefit the lynx or its habitat.

Plum Creek asserts that some of their land does not contain the PCE for lynx, does not qualify for critical habitat protection, and has been erroneously included in the critical habitat designation. Plum Creek specifically mentioned the Olney Block, a property in northwestern Montana, as having too little lynx habitat to be considered essential to the species. Plum Creek has real estate development plans for this area and fears that designation would have a negative impact on their plans. In considering the suitability of the Olney Block property, we referred to our criteria for identifying the PCE for lynx. Boreal forest habitats are the landscapes characterizing PCE for lynx. Individual areas within a boreal forest system may contain one or more of the following:

(a) Presence of snowshoe hares and their preferred habitat conditions, which include dense understories of young trees, shrubs or overhanging boughs that protrude above the snow, and mature multistoried stands with conifer boughs touching the snow surface;

(b) Winter snow conditions that are generally deep and fluffy for extended periods of time;

(c) Sites for denning that have abundant coarse woody debris, such as downed trees and root wads; and

(d) Matrix habitat (e.g., hardwood forest, dry forest, non-forest, or other habitat types that do not support snowshoe hares) that occurs between patches of boreal forest in close juxtaposition (at the scale of a lynx home range) such that lynx are likely to travel through such habitat while accessing patches of boreal forest within a home range.

Lynx are a species that uses habitat at a landscape scale, relying on a landscape of interconnected habitats to travel long distances. For example, lynx home ranges often encompass well over 100 square kilometers (39 square miles). Within this home range, lynx may have to traverse between multiple patches of habitat that provide suitable prey density and denning areas. An individual may have to cross "matrix" habitats that do not provide foraging or denning opportunities, which is why, in the critical habitat designation, we consider matrix habitat to be essential to lynx. Matrix habitat holds a potential lynx home range together. Lynx occupancy of an area cannot be achieved without the potential for the establishment of a home range.

In Plum Creek's habitat analysis, they assert that the Olney Block and other areas do not contain a high enough percentage of "lynx habitat" to be considered essential (they do not define lynx habitat in a way that would allow us to determine if they are using our definition of occupied habitat). Plum Creek did not assess how the habitat within the Olney Block interacts with habitat outside of the parcel on adjacent State land to provide for the potential for lynx occupancy. We characterize habitat within the Olney Block, that does not provide high prey densities or denning habitat, as matrix, and consider it essential to the conservation of lynx that live there, because it provides connectivity of foraging and denning habitat across a large area. Therefore, we are including Plum Creek lands in the final designation.

### Economic Issues and Responses

#### *General Comments on Methodology and Scope*

(1) *Comment:* One commenter expressed concern regarding the validity of the DEA because its conclusions are inconsistent with the August 2006 DEA of Critical Habitat Designation for the Canada Lynx. A comment highlighted that, while the 2006 DEA estimates impacts of \$175 million to \$889 million, the 2008 DEA quantifies impacts of only \$2.82 million for just the administrative costs of section 7 consultation. Because impacts are significantly greater in the 2006 analysis, the commenters assert that the 2008 analysis understates economic impacts.

*Our response:* The 2006 DEA quantified present value impacts of \$99.5 million to \$259 million in areas proposed for critical habitat designation, applying a 7 percent discount rate; the \$175 million to \$889 million estimate refers to undiscounted impacts and is

therefore not directly comparable to the present value impacts in the 2008 DEA. There are several reasons why the values in the 2006 and 2008 analyses differ. First, the impact estimates being compared across the reports in this comment are associated with differing scopes of lynx conservation efforts. The 2006 DEA aggregated and presented the estimated impacts of all future impacts of lynx conservation, including both listing and critical habitat related conservation, as "coextensive" impacts. Coextensive impacts of \$99.5 million to \$259 million in the 2006 analysis also included impacts associated with overlapping protective measures of other Federal, State, and local laws that aid habitat conservation. The 2008 DEA separately measures: (a) The baseline (without critical habitat) impacts of lynx conservation; and (b) the incremental impacts specifically associated with the critical habitat designation. The present value incremental impacts expected to result solely from the critical habitat designation are estimated to be approximately \$1.49 million and are associated with administrative effort for section 7 consultations. All other lynx conservation impacts are estimated to occur regardless of critical habitat designation. The commenter's description of estimated administrative consultation costs in the 2008 DEA of \$2.82 million is incorrect; that estimate does not appear in the 2008 DEA. Other differences between the 2006 and 2008 DEA are described in Chapter 1, on pages 1–1 through 1–3, of the 2008 analysis.

(2) *Comment:* One commenter expressed concern about the potential for critical habitat to increase delays on the processing and environmental review of Federal permits: for example, projects that require a 404 permit under the Clean Water Act.

*Our response:* Section 2.3.2 of the DEA describes the potential for critical habitat designation to result in time delays for permit applications. In the case that critical habitat triggers a delay, it would be considered an incremental impact of the critical habitat designation. The DEA does not, however, forecast that this will be an outcome of the critical habitat designation. To the extent that the presence of critical habitat does result in time delays for projects, the DEA understates the incremental impacts of the critical habitat designation.

(3) *Comment:* Multiple comments provided on the DEA stated that it acknowledges the potential for the designation to have indirect effects, such as the enforcement of State and local laws, but fails to quantify the

associated costs. One commenter stated that, because the DEA does not quantify such indirect costs, the conservation benefits of these indirect regulatory methods should not be used in the analysis of the overall benefit of critical habitat designation. One commenter asserted that a critical habitat designation can increase attention and concern regarding potential environmental impacts of a project and may lead other permitting agencies to examine a proposal more carefully and take restrictive action that they otherwise would not. Another commenter stated that the DEA acknowledges the potential for a "stigma" effect but does not quantify associated impacts, which would have a greater impact on private landowners than the direct effects.

*Our response:* Section 2.3.2 notes that, in some cases, a critical habitat designation may trigger lynx conservation under other State or local laws. The section goes on, however, to describe that no State or local laws were identified in the study area for which critical habitat would trigger additional compliance. As described in Sections 5.1 and 5.5, planning departments in counties containing critical habitat were surveyed to assess whether the designation would affect permitting of development activities. Section 2.3.2 also recognizes that, in some cases, public perception of critical habitat designation may result in limitations of private property uses above and beyond those associated with anticipated project modifications and uncertainty related to regulatory actions. Public attitudes regarding the limits or restrictions of critical habitat can cause real economic effects to property owners, regardless of whether such limits are actually imposed. To the extent that potential stigma effects on real estate markets are probable and identifiable, these impacts are considered indirect, incremental impacts of the designation. It is unknown, however, whether lynx critical habitat will result in long-term stigma effects to property owners; as the public becomes aware of the true regulatory effect imposed by critical habitat, any impact of the designation on property values would be expected to decrease.

(4) *Comment:* One commenter stated that assumptions about future behavior based on past performance in the DEA are not accurate. The commenter suggests that a small sampling of private property owners to explore their aspirations for future land use would provide a reality check to the

assumptions made in the economic analysis.

*Our response:* The DEA does not rely solely on historic trends to forecast future behavior of landowners. Private landowners were contacted to discuss their ongoing and forecast land management; a list of private landowners that provided information to inform the analysis is included in the References section of the DEA.

(5) *Comment:* One commenter stated that the DEA describes 36 percent of the proposed critical habitat in Koochiching County, Minnesota, as being of unknown ownership. The commenter notes that, according to the Koochiching County Assessor, there is no land within the county of unknown ownership. Another commenter stated that the DEA identifies over 1 million acres of third-party-certified county-tax-forfeit forest land as being of unknown ownership in northeast Minnesota. The commenter asserts that the designation of critical habitat without first understanding the economic impacts of such a designation should not be allowed.

*Our response:* As described in the landowner type categories of Exhibit 1–2 of the DEA, no land is categorized as being of unknown ownership. Exhibit 5–2 misleadingly included a category “area under unknown ownership.” This label is corrected in the final rule to clarify that these lands are considered as being under private ownership, although the specific landowners are not identified. Regarding the tax forfeit land in northeast Minnesota, Exhibit 1–2 identifies 753,327 acres of land identified as “Local Public Ownership.” These are tax-forfeit public lands owned by the State and managed at the county level. A significant portion of these lands are managed for timber and are analyzed as such in the DEA.

(6) *Comment:* One commenter stated that the DEA ignores that private land rights are eroding through partial regulatory takings and assumes that there is no risk that regulatory infrastructure will be used to further diminish private land values.

*Our response:* The DEA considers the extent to which lynx conservation may affect private land values. Chapter 5 of the DEA describes impacts to private land values associated with avoiding or minimizing impacts to the lynx and its habitat of proposed development projects. Specifically, as described in Section 5.5, the analysis assumes that where development is limited for the purposes of lynx conservation, a portion of the value of the parcel associated with its potential for future development is lost. As noted in the DEA, however, only one forecast project

was identified (the Moosehead Lake Land Use Concept Plan in Maine) for which information on both the scope and scale of the development and on potential lynx conservation recommendations were available to forecast impacts on land values.

(7) *Comment:* According to one commenter, the DEA assumes that the only costs imposed on private landowners by critical habitat designation result from administrative effort in conducting section 7 consultation. This assumption ignores future costs for lynx management activities resulting from section 7 consultation. Further, the DEA quantifies costs of lynx management activities already under way and assumes that these plans will be models for conservation efforts in the remaining proposed habitat. The analysis does not, however, quantify costs of implementing these management plans on the 40 percent of habitat that is not covered by existing plans.

*Our response:* As described on page ES–2, the DEA quantifies only administrative costs associated with section 7 consultation as incremental impacts of the critical habitat designation. While future consultations are forecast to result in project modifications across the land use activities considered in the report, these project modifications are expected to occur regardless of the critical habitat designation. The Service has not described additional project modifications that may be solely attributable to the designation of critical habitat. With regard to the 40 percent of lands not covered by existing lynx management plans, the DEA does not consider it reasonably foreseeable that all landowners across the areas proposed for critical habitat will adopt lynx management plans following a designation of critical habitat. As described in Chapter 4, the analysis considers where lynx management plans may be applied in the future. Specifically, Section 4.3.3 highlights the potential conservation efforts of future lynx management guidelines for private lands in Maine. These potential guidelines differ significantly from the conservation efforts described in existing lynx management plans (e.g., the LCAS and NRLMD), evidencing that these private lands would not necessarily apply existing lynx management plans.

(8) *Comment:* A commenter stated that the DEA described ancillary benefits of lynx critical habitat that are considered to the extent they result in observable impacts on markets. However, the analysis does not quantify

these impacts. For example, while reduced economic welfare to snowmobilers associated with increased crowding on trails is quantified as a cost, the analysis doesn’t quantify welfare gains to participants in non-motorized recreation associated with reduced noise and air pollution.

*Our response:* Section 6.2 considers welfare impacts associated with restrictions on snow mobile trail expansions. Scenario 2 of this analysis assumes that limiting future trail expansions increases crowding on existing trails resulting in decreased utility per snowmobile trip. As such, the analysis does not assume there is a net decrease in snowmobiling but a change in the distribution of the occurrence of snowmobiling. As a result, while some participants engaged in non-motorized recreation in some areas may experience welfare gains (i.e., areas where trails are precluded), others may experience welfare losses (areas in which the existing trails are more crowded). Further, data regarding the distribution of non-motorized recreators in these areas were not available.

(9) *Comment:* One comment from the Confederated Salish and Kootenai Tribes of the Flathead Nation stated that the DEA lacked specific information for areas proposed for exclusion from the critical habitat designation.

*Our response:* The DEA separates any costs anticipated to occur on areas proposed for exclusion from critical habitat designation. Sections 4.4, 4.5, and 8.5 quantify the pre- and post-designation administrative costs of section 7 consultations on these lands proposed for exclusion, and Section 4.4 quantifies the post-designation baseline impacts to the Passamaquoddy Tribe related to their involvement in the Maine Healthy Forest Reserve Program (Unit 1).

#### *Comments on Timber Issues*

(10) *Comment:* One commenter stated that the DEA predicts 142 lost jobs due to restrictions on pre-commercial thinning from the designation of critical habitat for the lynx. The comment asserts that this estimate fails to take into account the ancillary employment that will be lost in related markets, such as housing, sawmills, and local retail.

*Our response:* As described in Section 4.4.1, the analysis employs a regional economic modeling tool, IMPLAN, to estimate the number of jobs lost in the regional economy due to reduced pre-commercial thinning levels. IMPLAN translates the lost revenues associated with reduced pre-commercial thinning levels into changes in demand for goods and services in related economic sectors

in the regional economy. Thus, the estimated 142 lost jobs in proposed critical habitat unit 4 (presented in Exhibit 4–10) represents the effect of reduced pre-commercial thinning on the regional economy and not just pre-commercial thinning jobs. Additionally, reductions in pre-commercial thinning levels are baseline lynx conservation efforts; no further reductions in pre-commercial thinning levels are estimated to occur due to the designation of critical habitat for the lynx.

(11) *Comment:* Two commenters questioned why the Washington Department of Natural Resources (WDNR) foregone revenue impacts are high relative to those of other timber managers. Out of the \$13.5 million in foregone timber revenue estimated in the DEA, \$11.3 million is associated with WDNR, although it covers a relatively small portion of the critical habitat area. Further, logging is precluded on a considerable portion of the WDNR lands, because the timber rights were purchased for conservation. The commenter questions whether non-lynx-related logging restrictions on the WDNR lands, such as stream buffers, HCPs, and a log import ban, were included in the foregone revenue estimates.

*Our response:* Economic impacts associated with public land were based on communication with the landowners regarding the specific conservation efforts they are applying and the resulting economic implications. Post-designation baseline impacts specifically associated with WDNR lands are described in Section 4.5.2 of the analysis. According to the WDNR, lynx conservation efforts on their land in proposed critical habitat resulted in removing land from active timber management. Specifically, 30 percent of the approximately 105,000 acres of WDNR land in proposed critical habitat is removed from active timber management, resulting in economic impacts of \$1.06 million annually. While other public landowners implementing lynx management plans have employed lynx conservation efforts, such as restricting pre-commercial thinning, they have not removed land completely from timber production for the purposes of lynx conservation. As a result, the economic impacts of lynx conservation on WDNR lands are greater than on other lands implementing lynx management plans.

(12) *Comment:* F.H. Stoltze Land and Lumber commented that it provided information on the potential indirect and direct impacts of critical habitat designation on their lands in previous

comment periods but none of that information was used in the DEA.

*Our response:* The potential direct and indirect impacts of critical habitat designation provided by F.H. Stoltze Land and Lumber Company (Stoltze) during the public comment period for the proposed rule are summarized in subsection 4.3.6 of the DEA. The section further describes that Stoltze's assumptions regarding how the Service may regulate their lands for the purposes of lynx conservation are not consistent with the assumptions made in the DEA. First, Stoltze quantifies the impacts of the enforcement of lynx conservation on their lands similar to that described in the Lynx Conservation Assessment and Strategy (LCAS). There is no precedent for the Service to request these types of lynx conservation efforts on private lands, nor has the Service indicated it intends to do so in the future. Second, ongoing negotiations regarding lynx management guidelines between the Service and private timber landowners indicates that lynx conservation guidelines for private landowners may differ significantly from the LCAS (see Section 4.3.3 of the analysis which describes the Service's recommendations with respect to lynx management guidelines on private timberland in Maine). Further, Stoltze assumes the Service may regulate their land management via section 7 consultation regarding 404 permits or fire hazard mitigation projects in critical habitat. To date, no consultations have taken place regarding these activities. All section 7 consultations on private timberlands in Unit 4 have been for special use permits and none has required any lynx conservation efforts or denied access to private lands. The Service has not indicated that this is expected to change following a critical habitat designation of these lands.

(13) *Comment:* One commenter asserted that the DEA does not consider that private forestland owners will be forced to seek alternative uses, Federal lands will lose valuable management tools, and Montana will lose its forest products infrastructure to lynx habitat.

*Our response:* The assertion that private timberland owners may have to seek alternate land uses due to lynx conservation is predicated on the assumption that these landowners would be required to implement conservation efforts for the lynx similar to those specified in the LCAS. For the reasons described in Section 4.3.6, the DEA does not assume this is a reasonably foreseeable assumption. The DEA does, however, consider the economic impacts of restricting the pre-commercial thinning management tool

on Federal lands, where section 7 consultation requirements apply, in subsection 4.4.1, and the effect on the regional forest products industries.

(14) *Comment:* A comment from Plum Creek provided information on the costs of its ongoing and forecasted lynx conservation efforts. In the baseline, Plum Creek stated that absent critical habitat designation they expect to continue to conduct experimental pre-commercial thinning on approximately 200 ac (81 ha) per year at a present value cost of \$230,000 (assuming an internal rate of return of 8 percent and a 15 percent discount rate). The company also intends to continue to contribute to research in Maine and Montana for lynx and snowshoe hare whether or not critical habitat is designated, at a cost of \$150,000 (\$10,000 per year discounted at 3 percent). Plum Creek further expects to implement mitigation measures for road construction at a cost of between \$110,000 and \$250,000 per year absent critical habitat. In addition, slower speed limits are expected to result in social welfare impacts to motorists. The commenter noted that not enough information is available, however, to quantify these costs.

*Our response:* While Section 4.3.6 of the DEA summarized Plum Creek's 2006 economic impacts estimates, impact estimates provided in their comment on the October 2008 DEA are different. As a result, these baseline impacts as estimated by Plum Creek are new information on their baseline lynx conservation efforts and are provided in the final economic analysis. The impacts described by Plum Creek are not entirely additive with the baseline impacts as quantified in the DEA. The DEA does include impacts associated with private landowner funding of lynx-related research in the baseline. The analysis does not, however, break out the fraction of those costs borne specifically by Plum Creek. Because of this, and because Plum Creek's estimated impacts are not broken down by their land ownership in Maine and Montana, the final economic analysis provides this information to decision makers but does not update its estimate of baseline impact. This comment does not, however, change the estimated incremental economic impacts associated with the critical habitat designation.

(15) *Comment:* Plum Creek further commented that the Montana and Maine Lynx Agreements would only be implemented on private lands in the absence of critical habitat designation. The implementation of these plans would cost approximately \$230,000 for

distributing information, hosting annual workshops, and supporting lynx research and monitoring. The associated benefits to the lynx of implementing these plans would be lost in the case that critical habitat is designated on these lands and should therefore be considered incremental costs of the critical habitat designation.

*Our response:* As private landowners have funded lynx conservation research in the past, the DEA includes impacts of this continued funding as baseline impacts of lynx conservation. In the case that the critical habitat designation results in private landowners ceasing to fund lynx-related research, baseline impacts are overestimated in the DEA and any benefits associated with these investments in lynx-related research would be foregone. Information is not available, however, to describe benefits or improvements in lynx conservation resulting specifically from the investments of these private landowners in lynx-related research.

#### *Comments on Development Analysis*

*(16) Comment:* A comment on the DEA stated that the value of private property should not be based on that of similar properties as landowners may have differing objectives for their land use. The comment further states that the DEA understates or ignores the cost of environmental measures on private land ownership.

*Our response:* As described in Section 5.3.2, the analysis assumes that privately-owned property values within critical habitat include silvicultural rents, the growth premium, and the option value for future development. Where future development is precluded from a parcel, the reduction in land value equals the sum of growth premium and option value (i.e., the property value is reduced to its silvicultural rents). The associated land values for these properties described in the analysis were determined by assessors and consider the potential future uses of the property; they are not based on comparison to land use decisions on other properties.

*(17) Comment:* One commenter stated that the DEA shows a 49 percent increase in the building permits from 2000 to 2007 in Koochiching County, Minnesota, a county with declining population. The commenter asserts that this is an inaccurate portrayal of building activity. In fact, before this time, the county was operating an under-funded inspection and permitting system. The county hired an additional appraiser who instructed owners of existing, un-permitted structures to obtain building permits in this time

period. Building permits issued in this period are therefore not indicative of actual construction activity.

*Our response:* Correspondence with the Koochiching County Assessor's Office has confirmed that two additional appraisers were hired between 2000 and 2007 and that these hires resulted in an unknown number of additional un-permitted structures obtaining permits in 2007. The 2000 and 2007 building permit figures in Exhibit 5-2 of the DEA may therefore not be representative of development activity during those years in Koochiching County. In fact, development activity is likely less than that described in the analysis. Section 5.5.2 of the final economic analysis therefore indicates that development pressure in Koochiching County is anticipated to be minimal.

*(18) Comment:* According to one comment, the baseline impacts of lynx conservation associated with the proposed development at Moosehead Lake, Maine, are overestimated as some level of development restriction would occur even in the absence of lynx protections, as the DEA notes on page ES-3.

*Our response:* Section 2.3.1 of the DEA describes the baseline as "the existing state of regulation, prior to the designation of critical habitat, which provides protection to the species under the Act, as well as under other Federal, State and local laws and guidelines." Regarding the proposed Moosehead project, the analysis only quantified impacts of the Service's conservation recommendations related to the lynx, although a portion of these may be implemented even absent the lynx. Impacts of these conservation efforts are appropriately assigned to the baseline in the analysis. Conservation associated with the Moosehead project that did not overlap potential lynx conservation recommendations is not quantified in the DEA.

*(19) Comment:* One commenter stated that the DEA mischaracterizes the easements under the 1964 Forest Roads and Trails Act. The commenter suggested removing this language, as this information is mistaken and not relied upon in the DEA. Specifically, the commenter asserted that the analysis describes that the U.S. Department of Agriculture has proposed to change language in the 1964 Forest Roads and Trails Act broadening the scope of the Act to include road uses for residential and commercial development. In fact, they are considering a draft amendment to certain easements owned by Plum Creek that would simply clarify, not change, the scope of those easements as they already cover road use for

residential and commercial development. Because there is no expansion of access rights, just a clarification, the matter should have no economic impacts that affect the DEA.

*Our response:* Given this information on the 1964 Forest Roads and Trails Act, and the fact that this does not change the assumptions made or the estimated economic impact, the language involving the Forest Roads and Trails Act is removed in the final economic analysis.

*(20) Comment:* One private landowner, Plum Creek, commented that the critical habitat is likely to affect development in Maine and Montana. In the case that Maine's Land Use Regulatory Commission (LURC) treats the critical habitat area as if it were a Fish and Wildlife Protection Subdistrict, proposed developments within critical habitat would require an additional permit. Furthermore, meeting LURC's burden of proof that proposed developments will not harm the natural environment may prohibit these developments. Additionally, if Clean Water Act section 404 permits are required for development in Maine critical habitat areas, development projects may be modified or precluded as a result of section 7 consultation. Plum Creek commented that if critical habitat is designated, they will likely abandon their Land Use Concept Plan at Moosehead Lake (Moosehead Lake Plan). Lands in the Concept Plan are valued at \$189.6 million to Plum Creek and the conservation easements were valued at \$469,000 in benefits for the local residents and \$9.2 million in benefits for Maine residents. In total, public benefits of the balance easement were quantified at between \$10.8 and \$19.2 million. These benefits would be foregone in the case that critical habitat is designated.

*Our response:* As described in Section 5.5.1, the DEA quantifies impacts related to two scenarios. At the low end, lynx conservation related to the Moosehead Lake Plan in Maine is assumed to follow LURC's written recommendations; at the high end, the analysis assumes lynx conservation will follow more stringent recommendations provided by the Service. The DEA did not consider a scenario in which Plum Creek abandons the Moosehead Lake Plan entirely. The final economic analysis therefore provides the information regarding potential economic impacts of this scenario. While there are costs (foregone benefits) to Plum Creek and to the public of abandoning the plan, there may also be an economic benefits Plan that offsets the cost estimates presented by Plum

Creek. The alternative use scenario of these lands absent the Moosehead Lake Plan is largely uncertain. As a result, it is difficult to predict what sorts of economic costs and benefits would be associated with the alternative uses of the land. These issues are discussed in greater depth in the final economic analysis.

(21) *Comment:* Plum Creek commented that designation of critical habitat in Montana may prompt local land use agencies to impose minimum lot sizes on subdivision developments. According to Plum Creek's analysis, requiring that future Plum Creek developments in proposed critical habitat have lot sizes greater than 20, 160, and 640 acres would result in losses of \$0.44 million, \$74.2 million, and \$243.1 million, respectively. Plum Creek bases their lot size assumptions on existing growth policies for counties in Montana. Specifically, at the high end, Missoula County's Seeley Lake Regional Plan identifies lynx as a species of concern and recommends a land use density of one dwelling per 640 acres.

*Our response:* With regard to development in Montana, Section 5.5.3 of the DEA describes that, although no modifications to development projects have occurred in the past to benefit the lynx, it is possible that future permitting requirements may become more stringent as a result of critical habitat designation. Communication with Montana county planners, however, indicated that few are likely to modify their minimum lot size requirements in response to critical habitat designation. Further, it is unclear whether any minimum lot size requirements would be baseline or related to critical habitat. The Seely Lake Regional Plan example is an existing (baseline) protection and already imposes its minimum lot size. This would therefore not be considered an incremental impact of critical habitat designation in the DEA. As such, the final economic analysis presents the results of Plum Creek's study of impacts to development on their Montana lands, but does not include these estimates in the total impacts of the critical habitat designation as they are considered too speculative.

#### *Other Comments on the Draft Economic Analysis*

(22) *Comment:* A comment on the DEA asserted that impacts to recreation were underestimated because the analysis did not take into consideration that congested trails, resulting from the closure of 29 miles of trails, may decrease winter tourism and recreation. This will increase pressure on local

police and hospitals and reduce the amount of jobs in the tourism industry.

*Our response:* Section 6.2 describes impacts to snowmobiling activities due to potential restrictions on trail use and new trail construction. The analysis does not state that 29 miles of trail in Loomis State Forest within Unit 4 will be closed; only that 29 miles of the Washington State's 3,000 to 3,500 miles of snowmobile trails fall within the Loomis State Forest. With respect to costs from increased snowmobile congestion, under a high-bound estimate, the DEA assumes the cost of lost social welfare of \$109,000 for Unit 4 due to increased trail congestion. These impacts are considered baseline as part of Okanogan-Wenatchee National Forest's implementation of the LCAS. In addition, though implementing the LCAS will preclude the creation of new trails, most snowmobile riding in the Loomis area occurs on ungroomed trails.

(23) *Comment:* According to one comment, the incremental impact to mining activity in Unit 2 of \$10,900 is not credible because of the size and economic contribution of this industry in this region.

*Our response:* The taconite mining industry, and more recently the non-ferrous mining industry, has been significant contributors to the local and regional economy in northern Minnesota. Lynx-related conservation efforts associated with mining activities are assumed to occur regardless of critical habitat designation and are therefore appropriately assigned to the baseline. That is, incremental impacts are low because the critical habitat is not expected to affect mining activity beyond the existing level of lynx conservation.

(24) *Comment:* According to one comment, the DEA underestimates impacts to grazing activities by failing to take into consideration that farmers with allotments on public lands may have to either decrease the number of cows they graze, or overgraze land adjacent to the critical habitat designation. These changes in grazing activity would in turn cause job losses in the regional retail and service industries.

*Our response:* As stated in paragraph 320 of the DEA, we found "no evidence that grazing (is) a factor threatening lynx." Section 7 consultations for grazing activities under the LCAS have resulted in few conservation recommendations and no project modifications. Paragraph 360 further states that, "(o)pportunity for grazing has not been affected by the implementation of the lynx management

plans and conservation recommendations made during section 7 consultation." Therefore, the DEA assumes that, beyond the costs of consultation, grazing activities will not be affected by critical habitat.

(25) *Comment:* One comment stated that hunting, as an economic activity, seems to have been overlooked in the DEA. Road construction in wetlands requires consultation and road access is fundamental to the economy of Northern Minnesota's recreational hunting industry. The commenter further asserted that the value of land as deer hunting property seems to have been similarly overlooked.

*Our response:* Impacts to hunting and trapping activities are included in section 6.4 of the analysis and are primarily costs associated with establishing education programs and enforcing trapping regulations to avoid incidental take of lynx. The DEA assumes that the opportunity to hunt will not be diminished due to critical habitat. With respect to road construction in wetland areas and road access in northern Minnesota, a section 7 consultation may require modifications to a road project (i.e., culverts and other habitat crossing measures), however, critical habitat designation will not preclude road access.

(26) *Comment:* A comment provided on the DEA stated that the analysis does not mention boating as a potentially affected activity although Unit 2 contains most of Minnesota's 17,000 lakes of over one acre. Construction of boat docks, for example, is likely to trigger a section 7 consultation.

*Our response:* The Service does not list boating, or construction of boat docks, as a threat to the lynx or its habitat in any of its lynx management documents, nor has this activity been the subject of consultation in the past. There is therefore no indication that this activity will be affected by lynx conservation in the future.

(27) *Comment:* The Small Business Administration (SBA) commented that the Initial Regulatory Flexibility Analysis (IRFA) is inadequate to provide a factual basis for certifying that the proposed critical habitat designation will not have a significant impact on a substantial number of small entities. First, the IRFA does not provide sufficient information to adequately forecast costs associated with section 7 consultations involving small entities. In the case that critical habitat is designated, past section 7 consultations initiated by small entities to avoid jeopardy must then be re-opened to account for newly designated critical

habitat. Second, the IRFA only considers the administrative costs of re-opening past consultations and fails to consider costs small entities could face if required to modify projects to avoid adverse modification of critical habitat. In addition, the IRFA incorrectly assumes that no new section 7 consultations will occur as a result of the proposed critical habitat because the critical habitat designation only covers areas currently occupied by the species. Finally, the SBA stated that the IRFA does not provide any estimates of costs of consultations with private landowners under section 10 of the ESA to obtain an incidental take permit that may result from critical habitat designation. The SBA further stated that the Service must prepare a Final Regulatory Flexibility Analysis (FRFA) if it finalizes the critical habitat designation for the lynx.

*Our response:* The DEA does include costs of project modifications associated with forecast section 7 consultations. These project modifications are all expected to be recommended regardless of the critical habitat and are therefore assigned to the baseline impacts quantified in the analysis. Further, the DEA does forecast new consultations (not just re-openings) following the designation of critical habitat; however, these new consultations are expected to occur regardless of whether critical habitat is designated. The lynx conservation quantified is expected to occur regardless of the critical habitat designation because, as described on page ES-2 of the draft economic analysis and in the activity-specific chapters, of the broad scope and scale of existing lynx conservation that already occurs across the study area even absent critical habitat. First, the Service does not expect the conservation direction of existing lynx management plans, which cover 60 percent of the proposed critical habitat, to be altered following a critical habitat designation. Second, the Service has not identified any additional project modifications that it may recommend via section 7 consultation following a critical habitat designation above and beyond what has been recommended in the past to address potential jeopardy issues. As a result, the Service has not indicated that any regulatory changes would occur due to critical habitat designation. In terms of potential indirect impacts of critical habitat designation, the draft economic analysis notes in the Foreword (Section 1.1) that significant uncertainty is associated with the analysis due to the dynamic nature of land use planning, ongoing

discussion regarding lynx conservation with private timberland owners, and whether particular land use activities are risk factors. As described in Appendix A, the IRFA is based on the incremental impacts expected to be generated specifically by the designation of critical habitat. As a result, the baseline impacts of forecast section 7 project modifications are not relevant to the IRFA because they are not engendered by the critical habitat rulemaking. In addition, critical habitat does not necessarily increase the need for section 10 incidental take permits. In surveying landowners and land managers, the economists who wrote the DEA did not identify any basis for assuming critical habitat designation would result in landowners developing habitat conservation plans, which are typically associated with the issuance of section 10(a)(1)(B) incidental take permits. We completed a FRFA and it is made available with the final economic analysis concurrently with this final rule.

*(28) Comment:* Multiple commenters stated that the DEA is unbalanced because it focuses almost exclusively on the economic costs of critical habitat designation but does not analyze expected benefits. One commenter asserted that the protection of critical habitat would likely provide broader ecological benefits for myriad other species and ecosystem functions. One commenter stated the analysis should consider the property value benefits as a result of the creation of open space areas. Another commenter stated that the DEA should be considered a cost analysis only, because it focuses only on one side of the total impacts.

*Our response:* Where sufficient information is available, the DEA attempts to measure the net economic effects of species conservation efforts. The analysis does not attempt to measure net costs of broader social benefits that may result incidentally from species conservation. The primary purpose of the rulemaking is the potential to contribute to the conservation of the lynx. The direct benefits of the rule are primarily biological; weighing these benefits to lynx conservation against the expected cost impacts is part of the requirement of section 4(b) of the Act. Therefore, we use cost estimates from the DEA as one factor against which biological benefits are compared during the section 4(b)(2) weighing process. We are also interested in weighing indirect benefits of critical habitat designation, if they can be verified (we know they will occur), measured economically, and built into a net DEA. However, many potential

indirect benefits resulting from critical habitat designation cannot be verified or measured economically. In future, as economic reports of conservation benefits to people and communities are completed, we may be better able to analyze this type of data.

*(29) Comment:* One commenter requested that the Service consider the on-the-ground benefits of the Montana Lynx Conservation Agreement in comparison with the benefits of critical habitat designation. The commenter asserted that the outreach, education, research, and implementation activities proposed under the agreement provide greater lynx conservation than any actions achievable by the Service through critical habitat designation.

*Our response:* We analyzed the benefits of inclusion of lands included in the Montana Partnership Conservation Agreement against benefits of exclusion (see Exclusions Under Section 4(b)(2) of the Act section; Unit 3). We found that these lands should be included in the critical habitat designation, mainly because of uncertainty of implementation and effectiveness of commitments included in the agreement (which is still a draft), and because the agreement provided no commitment to implement on-the-ground habitat management of habitat for lynx.

*(30) Comment:* One commenter stated that the DEA did not consider the Southern Rockies habitat area and therefore the Service has not fulfilled the requirement to show that the benefits of excluding the Southern Rocky Mountains outweigh the benefits of designating habitat in the region.

*Our response:* The Southern Rockies did not meet our criteria for defining critical habitat. The areas we determined to be essential for the conservation of lynx (see Criteria Used to Identify Critical Habitat section of this rule) contain the physical and biological features essential to lynx and have relatively recent (post-1995) records and evidence of breeding lynx populations. The Southern Rockies were not included in the proposed critical habitat, and therefore, no consideration was given to excluding those lands from critical habitat.

*(31) Comment:* One commenter stated that the Service has not issued any regulations or other binding documents regarding how to approach the ESA 4(b)(2) balancing in assessing whether stimulating private conservation agreements has greater conservation benefits than designating certain private lands as critical habitat.

*Our response:* In designating critical habitat, we are bound by the Act, and

regulations at 50 CFR 424.12. We agree that we have not issued new regulations regarding how to approach section 4(b)(2) critical habitat exclusion analysis. However, we are currently following our February 12, 2008, Draft Critical Habitat Exclusions Guidance. This guidance was developed in response to critical habitat case law, which documents the Courts' interpretations of the requirements of the Act. This rule is also consistent with the October 3, 2008, opinion from the Solicitor titled, "The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act."

(32) *Comment:* According to one comment, the Service cannot lawfully maintain that the designation of critical habitat would not result in any incremental economic impacts because recent court decisions, *Gifford Pinchot Task Force v. FWS* (9th Cir. 2004) and *Arizona Cattle Growers Association v. Kempthorne* (D. Az. 2008), and an October 2008 Solicitor's Opinion, indicate that critical habitat is a more stringent ESA Section 7 compliance standard than the jeopardy standard.

*Our response:* The DEA weighs the economic effects of critical habitat designation separately from effects of listing of the species. This separation of effects is termed an "incremental" analysis. The DEA includes analysis of known effects resulting from critical habitat designation, including those related to potential adverse modification of critical habitat.

#### *Summary of Changes From Proposed Rule*

We did not propose changes to 50 CFR 17.11(h) in the proposed rule because we were not proposing any substantive changes to the entry for Canada lynx on the List of Threatened and Endangered Wildlife. However, in this final rule, we are revising the entry for Canada lynx at 50 CFR 17.11(h) to correct some typographical errors; the current entry includes Colorado and Idaho twice in the "Historic Range" column.

In preparing the revised final critical habitat designation for the lynx, we reviewed and considered comments from the public and peer reviewers on the proposed revised designation of critical habitat published on February 28, 2008 (73 FR 10860). We published a notice announcing the availability of the DEA and draft environmental assessment on October 21, 2008 (73 FR 62450). As a result of comments received on the proposal, comments received on the DEA, comments

received on the draft environmental assessment, we made the following changes in our final designation:

(1) We reevaluated the proposed revised critical habitat units based on peer review, public comments, and biological information received during the public comment period. Collectively, we excluded approximately 4,468 km<sup>2</sup> (1,725 mi<sup>2</sup>) of land from this revised final critical habitat designation. Table 1 provides differences in the amount of area proposed for designation and the areas designated in this final rule. We excluded Tribal lands per Executive Order 3206 (see Tribal Lands Excluded from Lynx Critical Habitat section below), and non-Federal lands with existing, implemented, and effective lynx management plans (see Exclusions Under Section 4(b)(2) of the Act section below).

(2) We removed portions of units that did not contain the primary constituent element (PCE), and areas where existing development was concentrated, from the final designation based on available maps. In some areas, unit boundaries were expanded to incorporate adjacent lynx habitat that had been inadvertently left out of the proposed boundary. These changes from the proposed boundary were noted in the notice of availability of the DEA and draft environmental assessment published in the **Federal Register** (73 FR 62450, October 21, 2008).

(3) We have clarified the primary constituent element to reflect the importance of mature multistoried forest stands with conifer boughs that touch the snow surface. These mature stands are especially important as lynx habitat in the northern Rocky Mountains.

(4) We have modified the textual description of areas that are not included in critical habitat.

#### **Critical Habitat**

Critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) That may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time of listing must contain the physical and biological features that are essential to the conservation of the species, and be included only if those features may require special management consideration or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found those physical and biological features essential to the conservation of the species, as defined at 50 CFR 424.12(b)). Under the Act, we can designate critical habitat in areas outside of the geographical area occupied by the species at the time of listing only when we determine that those areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of

the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions represent the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery outline or the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designation is unimportant or may not promote the recovery of the species.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the Federal agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information

available to these planning efforts calls for a different outcome.

### Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas occupied by the species at the time of listing to designate as critical habitat, we consider the physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection. We consider the physical and biological features to be the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for the conservation of the species. These include, but are not limited to:

1. Space for individual and population growth and for normal behavior;
2. Food, water, air, light, minerals, or other nutritional or physiological requirements;
3. Cover or shelter;
4. Sites for breeding, reproduction, and rearing (or development) of offspring; and
5. Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

### *Boreal Forest Landscapes (Space for Individual and Population Growth and Normal Behavior)*

Lynx populations respond to biotic and abiotic factors at different scales. At the regional scale, snow conditions, boreal forest and competitors (especially bobcat) influence the species' range (Aubry *et al.* 2000, p. 378-380; McKelvey *et al.*, 2000b pp. 242-253; Hoving *et al.*, 2005 p. 749). At the landscape scale within each region, natural and human-caused disturbance processes (e.g., fire, wind, insect infestations and forest management) influence the spatial and temporal distribution of lynx populations by affecting the distribution of good habitat for snowshoe hares (Agee 2000, pp. 47-73; Ruediger *et al.* 2000, pp. 1-3, 2-2-2-6, 7-3). At the stand-level scale, quality, quantity, and juxtaposition of habitats influence home range size, productivity, and survival (Aubry *et al.* 2000, pp. 380-390; Vashon *et al.* 2005a, pp. 9-11). At the substand scale, spatial distribution and abundance of prey and microclimate influence movements, hunting behavior, den, and resting site locations.

All of the constituent elements of critical habitat for lynx are found within large landscapes in what is broadly

described as the boreal forest or cold temperate forest (Frelich and Reich 1995, p. 325, Agee 2000, pp. 43-46). In the contiguous United States, the boreal forest is more transitional rather than true boreal forest of northern Canada and Alaska (Agee 2000, pp. 43-46). This difference is because the boreal forest is at its southern limits in the contiguous United States, where it transitions to deciduous temperate forest in the Northeast and Great Lakes and subalpine forest in the west (Agee 2000, pp. 43-46). We use the term "boreal forest" because it generally encompasses most of the vegetative descriptions of the transitional forest types that comprise lynx habitat in the contiguous United States (Agee 2000, pp. 40-41).

At a regional scale, lynx habitat is within the areas that support deep snow for extended periods and that support boreal forest vegetation types (see below for more detail). In eastern North America, lynx distribution was strongly associated with areas of deep snowfall and 100-km<sup>2</sup> (40-mi<sup>2</sup>) landscapes that had been previously treated with herbicides and had a high proportion of regenerating forest (Hoving 2001, pp. 75, 143). Hoving *et al.* (2004, p. 291) concluded that the broad geographic distribution of lynx in eastern North America is most influenced by snowfall, but within areas of similarly deep snowfall, measures of forest succession become more important factors in determining lynx distribution. In the Rockies, lynx habitat relationships appear to be less tied to early successional forest stages, with high use, especially in the critical winter season, in mature multistoried forest stands where conifer branches reach the snow surface and thereby provide hare forage (Squires *et al.* 2006).

Boreal forests used by lynx are generally cool, moist, and dominated by conifer tree species, primarily spruce and fir (Agee 2000, pp. 40-46; Aubry *et al.* 2000, pp. 378-382; Ruediger *et al.* 2000, pp. 4-3, 4-8-4-11, 4-25-4-26, 4-29-4-30). Boreal forest landscapes used by lynx are a heterogeneous mosaic of vegetative cover types and successional forest stages created by natural and human-caused disturbances (McKelvey *et al.* 2000a, pp. 426-434). In many places periodic vegetation disturbances stimulate development of dense understory or early successional habitat for snowshoe hares (Ruediger *et al.* 2000, pp. 1-3-1-4, 7-4-7-5). In Maine, lynx were positively associated with landscapes altered by clearcutting 15 to 25 years previously (Hoving *et al.* 2004, p. 291). In other places, such as the northern Rocky Mountains, mature

multistoried conifer forests as well as dense regenerating conifer stands provide foraging habitat for lynx (Squires *et al.* 2006).

The overall quality of the boreal forest landscape and juxtaposition of stands in suitable condition within the landscape is important for both lynx and snowshoe hares in that it can influence connectivity or movements between suitable stands, availability of food and cover and spatial structuring of populations or subpopulations (Hodges 2000b, pp. 184–195; McKelvey *et al.* 2000a, pp. 431–432; Walker 2005, pp. 79). For example, lynx foraging habitat must be near denning habitat to allow females to adequately provision dependent kittens, especially when the kittens are relatively immobile. In north-central Washington, hare densities were higher in landscapes with an abundance of dense boreal forest interspersed with small patches of open habitat, in contrast to landscapes composed primarily of open forest interspersed with few dense vegetation patches (Walker 2005, p. 79). Similarly, in northwest Montana, connectivity of dense patches within the forest matrix benefited snowshoe hares (Ausband and Baty 2005, p. 209). In mountainous areas, lynx appear to prefer flatter slopes (Apps 2000, p. 361; McKelvey *et al.* 2000d, p. 333; von Kienast 2003, p. 21, Table 2; Maletzke 2004, pp. 17–18).

Individual lynx require large portions of boreal forest landscapes to support their home ranges and to facilitate dispersal and exploratory travel. The size of lynx home ranges is believed to be strongly influenced by the quality of the habitat, particularly the abundance of snowshoe hares, in addition to other factors such as gender, age, season, and density of the lynx population (Aubry *et al.* 2000, pp. 382–385; Mowat *et al.* 2000, pp. 276–280). Generally, females with kittens have the smallest home ranges while males have the largest home ranges (Moen *et al.* 2005, p. 11, Burdett *et al.* 2007, p. 463). Reported home range sizes vary greatly from 31 km<sup>2</sup> (12 mi<sup>2</sup>) for females and 68 km<sup>2</sup> (26 mi<sup>2</sup>) for males in Maine (Vashon *et al.* 2005a, p. 7), 21 km<sup>2</sup> (8 mi<sup>2</sup>) for females to 307 km<sup>2</sup> (119 mi<sup>2</sup>) for males in Minnesota (Moen *et al.* 2005, p. 12), and 88 km<sup>2</sup> (34 mi<sup>2</sup>) for females and 216 km<sup>2</sup> (83 mi<sup>2</sup>) for males in northwest Montana (Squires *et al.* 2004b, pp. 15–16).

### Forest Type Associations

#### Maine

Lynx were more likely to occur in 100 km<sup>2</sup> (40 mi<sup>2</sup>) landscapes with regenerating forest, and less likely to occur in landscapes with recent clearcut

or partial harvest, (Hoving *et al.* 2004, pp. 291–292). Lynx in Maine select softwood-dominated (spruce and fir) regenerating stands (Vashon *et al.* 2005a, p. 8). Regenerating stands used by lynx generally develop 15–30 years after forest disturbance and are characterized by dense horizontal structure and high stem density within a meter of the ground. These habitats support high snowshoe hare densities (Homyack 2003, p. 63; Fuller and Harrison 2005, pp. 716, 719; Vashon *et al.* 2005a, pp. 10–11). At the stand scale, lynx in northwestern Maine selected older (11- to 26-year-old), tall (4.6 to 7.3 m (15 to 24 ft)) regenerating clearcut stands and older (11- to 21-year-old) partially harvested stands (A. Fuller, University of Maine, unpubl. data).

#### Minnesota

In Minnesota, lynx primarily occur in the Northern Superior Uplands Ecological Section of the Laurentian Mixed Forest Province. Historically, this area was dominated by red pine (*Pinus resinosa*) and white pine (*P. strobus*) mixed with aspen (*Populus* spp.), paper birch (*Betula papyrifera*), spruce, balsam fir (*A. balsamifera*) and jack pine (*P. banksiana*) (Minnesota Department of Natural Resources [Minnesota DNR] 2003, p. 2).

Preliminary research suggests lynx in Minnesota generally use younger stands (less than 50 years) with a conifer component in greater proportion than their availability (R. Moen, University of Minnesota, unpubl. data). Lynx prefer predominantly upland forests dominated by red pine, white pine, jack pine, black spruce (*P. mariana*), paper birch, quaking aspen (*P. tremuloides*), or balsam fir (R. Moen, unpubl. data).

#### Washington

In the North Cascades in Washington, the majority of lynx occurrences were found above 1,250 m (4,101 ft) (McKelvey *et al.* 2000b, p. 243, 2000d, p. 321; von Kienast 2003, p. 28, Table 2; Maletzke 2004, p. 17). In this area, lynx selected Engelman spruce (*P. engelmannii*)-subalpine fir (*A. lasiocarpa*) forest cover types in winter (von Kienast 2003, p. 28, Maletzke 2004, pp. 16–17, Koehler *et al.* 2008, p. 1518). Lodgepole pine (*P. contorta*) is a dominant tree species in the earlier successional stages of these climax cover types. Seral (intermediate stage of ecological succession) lodgepole stands contained dense understories and therefore received high use by snowshoe hares and lynx (Koehler 1990, pp. 847–848; McKelvey *et al.* 2000d, pp. 332–335). Douglas-fir, ponderosa pine forests, openings, recent burns, open canopy

and understory cover, and steep slopes were all avoided habitat types (Koehler *et al.* 2008, p. 1518).

#### Northern Rockies

In the Northern Rocky Mountains, the majority of lynx occurrences are associated with the Rocky Mountain Conifer Forest or Western Spruce-Fir Forest vegetative class (Kuchler 1964, p. 4; McKelvey *et al.* 2000b, p. 246) and occur above 1,250 m (4,101 ft) elevation (Aubry *et al.* 2000, pp. 378–380; McKelvey *et al.* 2000b, pp. 243–245). The dominant vegetation that constitutes lynx habitat in these areas is subalpine fir, Engelmann spruce and lodgepole pine (Aubry *et al.* 2000, p. 379; Ruediger *et al.* 2000, pp. 4–8–4–10). Mature multi-storied stands are used preferentially in winter (Squires *et al.* 2006). As in the Cascades, lodgepole pine is an earlier successional stage of subalpine fir and Engelmann spruce climax forest cover types.

#### a. Snowshoe Hares (Food)

Snowshoe hare density is the most important factor explaining the persistence of lynx populations (Steury and Murray 2004, p. 136). A minimum snowshoe hare density necessary to maintain a persistent, reproducing lynx population within the contiguous United States has not been determined, although Ruggiero *et al.* (2000, pp. 446–447) suggested that at least 0.5 hares per hectare (ha) (0.2 hares per acre (ac)) may be necessary. Steury and Murray (2004, p. 137) modeled lynx and snowshoe hare populations and predicted that a minimum of 1.1 to 1.8 hares per ha (0.4 to 0.7 hares per ac) was required for persistence of a reintroduced lynx population in the southern portion of the lynx range.

The boreal forest landscape is naturally dynamic and usually contains a mosaic of forest stand successional stages. In some areas, particularly in the eastern portion of the DPS, stands that support high densities of snowshoe hares are of a young successional stage and are in a constant state of transition to other more mature stages. Conversely, if the vegetation potential (or climax forest type) of a particular forest stand is conducive to supporting abundant snowshoe hares, it likely will also go through successional stages that are unsuitable as lynx foraging (snowshoe hare habitat) or lynx denning habitat (Agee 2000, p. 62–72; Buskirk *et al.* 2000b, pp. 403–408) as part of a natural forest succession process. For example, a boreal forest stand where there has been recent disturbance, such as fire or timber harvest, resulting in little or no understory structure is unsuitable as

snowshoe hare habitat for lynx foraging. That temporarily unsuitable stand would regenerate into suitable snowshoe hare (lynx foraging) habitat within 10 to 25 years, depending on local conditions (Ruediger *et al.* 2000, pp. 1–3—1–4, 2–2—2–5). This continuation of this natural dynamism exhibited in boreal forest succession is crucial for lynx survival due to their dependence on intermediate successional stages in many areas. In places where lynx are dependent on mature forest stages, forest stand turnover still occurs, but on a longer time scale requiring the ability to recruit new mature forest stands as others are lost to fire, insect infestation, or human activities.

Forest management techniques that thin the understory may render the habitat unsuitable for hares and, thus, for lynx (Ruediger *et al.* 2000, pp. 2–4—3–2; Hoving *et al.* 2004, pp. 291–292). Stands may continue to provide suitable snowshoe hare habitat for many years until woody stems in the understory become too sparse, as a result of undisturbed forest succession or management (e.g., clearcutting or thinning). Thus, if the vegetation potential of the stand is appropriate, a stand that is not currently in a condition that is suitable to support abundant snowshoe hares for lynx foraging or coarse woody debris for den sites would develop into suitable habitat for snowshoe hares (and thus lynx foraging) with time. Therefore, we consider those forest areas with the potential, through natural succession, to produce high quality snowshoe hare habitat to be lynx habitat, regardless of the stage of forest succession that area is currently in.

As described previously, snowshoe hares prefer boreal forest stands that have a dense horizontal understory to provide food, cover and security from predators. Snowshoe hares feed on conifers, deciduous trees, and shrubs (Hodges 2000b, pp. 181–183). Snowshoe hare density is correlated to understory cover between approximately 1 to 3 m (3 to 10 ft) above the ground or snow level (Hodges 2000b, p. 184). Habitats most heavily used by snowshoe hares are stands with shrubs, stands that are densely stocked, and stands at ages where branches have more lateral cover (Hodges 2000b, p. 184). In Maine, the snowshoe hare densities were highest in stands supporting high conifer stem densities (Homyack 2003, p. 195, Robinson 2006, p. 69). In north-central Washington, snowshoe hare density was highest in 20-year-old lodgepole pine stands where the average density of trees and shrubs was 15,840 stems per ha (6,415 stems per ac) (Koehler 1990,

p. 848). In Montana, lynx use in winter corresponded to stands with a high number of large mature trees with branches that reached the snow surface (Squires *et al.* 2006, p. 15). Generally, earlier successional forest stages support a greater density of horizontal understory and more abundant snowshoe hares (Buehler and Keith 1982, p. 24; Wolfe *et al.* 1982, pp. 668–669; Koehler 1990, pp. 847–848; Hodges 2000b, pp. 184–191; Griffin 2004, pp. 84–88); however, sometimes mature stands also can have adequate dense understory to support abundant snowshoe hares (Griffin 2004, p. 88). In Montana, lynx favor multistory stands, often in older-age classes, where the tree boughs touch the snow surface but where the stem density is low (Squires *et al.* 2006, p. 15).

In Maine, the highest snowshoe hare densities were found in regenerating softwood (spruce and fir) and mixed-wood stands with high conifer stem densities (Fuller and Harrison 2005, pp. 716, 719, Robinson 2006, p. 69). In the north Cascades, the highest snowshoe hare densities were found in 20-year-old seral lodgepole pine stands with a dense understory (Koehler 1990, pp. 847–848). In montane and subalpine forests in northwest Montana, the highest snowshoe hare densities in summer were generally in younger stands with dense forest structure, whereas in winter, snowshoe hare densities were as high or higher in mature stands with dense understory forest structure (Griffin 2004, p. 53).

Habitats supporting abundant snowshoe hares must be present in a sufficient proportion (though not necessarily the majority) of the landscape to support a viable lynx population. Broad-scale snowshoe hare density estimates are not available for the areas being designated as lynx critical habitat. Available snowshoe hare density estimates are helpful in determining where snowshoe hares exist, but each estimate is specific to both a location and a point in time. Due to intrinsic, rapid fluctuations often seen in snowshoe hare populations, density estimates can not be considered definitive for any particular area. If enough data were gathered for a specific area over several years, these data could be used to calculate an average density (with margins of error included).

#### *b. Snow Conditions (Other Physiological Requirements)*

Snow conditions also determine the distribution of lynx and snowshoe hares. Deep, fluffy snow conditions likely restrict potential competitors such as bobcat or coyote from effectively

encroaching on or hunting in winter lynx habitat. Snowfall was the strongest predictor of lynx occurrence at a regional scale (Hoving *et al.* 2005, p. 746, Table 5). In addition to snow depth, other snow properties, including surface hardness or sinking depth, are important factors in the spatial, ecological, and genetic structuring of the species (Stenseth *et al.* 2004, p. 75).

In the northeastern United States, lynx are most likely to occur in areas with a 10-year mean annual snowfall greater than 268 cm (105 in) (Hoving 2001, p. 75). The Northern Superior Uplands section of Minnesota receives more of its precipitation as snow than any section in the State, has the longest period of snow cover, and the shortest growing season (Minnesota DNR 2003, p. 2). Mean annual snowfall from 1971 to 2000 in this area was generally greater than 149 cm (55 in) (University of Minnesota 2005 webpage).

Information on average snowfall or snow depths in mountainous areas such as the Cascades or northwest Montana is limited because there are few weather stations in these regions that have measured snow fall or snow depth over time. An important consideration is that the topography strongly influences local snow conditions. For example, in the Cascades, at the Mazama station, average annual snowfall from 1948 to 1976 was 292 cm (115 in) (Western Regional Climate Center 2005 webpage). In Montana, at the Seeley Lake Ranger Station, average annual snowfall from 1948 to 2005 was 315 cm (124 in), while at the Troy station the average total snowfall from 1961 to 1994 was 229 cm (90 in) (Western Regional Climate Center 2005 webpage).

#### *c. Denning Habitat (Sites for Reproduction and Rearing of Offspring)*

Lynx den sites are found in mature and younger boreal forest stands that have a large amount of cover and downed, large woody debris. The structural components of lynx den sites are common features in managed (logged) and unmanaged (e.g., insect damaged, wind-throw) stands. Downed trees provide excellent cover for den sites and kittens and often are associated with dense woody stem growth.

Sub-stand characteristics were evaluated for 26 lynx dens from 1999 to 2004 in northwest Maine. Dens were found in several stand types. Modeling of den site variables determined that tip-up mounds (exposed roots from fallen trees) alone best explained den site selection (J. Organ, Service, unpubl. data). Tip-up mounds may purely be an index of downed trees, which were

abundant on the landscape. Horizontal cover at 5 m (16 ft) alone was the next best performing model (J. Organ, unpubl. data). Dead downed trees were sampled, but did not explain den site selection as well as tip-up mounds and cover at 5 m (16 ft). Lynx essentially select dense cover in a cover-rich area for denning.

In the North Cascades, Washington, lynx denned in mature (older than 250 years) stands with an overstory of Engelmann spruce, subalpine fir, and lodgepole pine with an abundance of downed woody debris (Koehler 1990, p. 847). In this study, all den sites were located on north-northeast aspects (Koehler 1990, p. 847). In northwest Montana, the immediate areas around dens were in a variety of stand ages but all contained abundant woody debris including downed logs, blowdowns, and rootwads, and dense understory cover (Squires *et al.* 2004b, Table 3). Information on den site characteristics in Minnesota has not yet been reported (Moen *et al.* 2005, p. 8).

#### *Primary Constituent Element for the Canada Lynx*

Within the geographical area occupied by the lynx at the time of listing, we must identify the physical and biological features that are essential to the conservation of the species and that may require special management considerations or protections. The physical and biological features are primary constituent elements (PCEs) laid out in a specific quantity and spatial arrangement to be essential to the conservation of the species.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species, we have determined that the primary constituent element for lynx critical habitat is:

1. Boreal forest landscapes supporting a mosaic of differing successional forest stages and containing:

a. Presence of snowshoe hares and their preferred habitat conditions, which include dense understories of young trees, shrubs or overhanging boughs that protrude above the snow, and mature multistoried stands with conifer boughs touching the snow surface;

b. Winter snow conditions that are generally deep and fluffy for extended periods of time;

c. Sites for denning that have abundant coarse woody debris, such as downed trees and root wads; and

d. Matrix habitat (e.g., hardwood forest, dry forest, non-forest, or other habitat types that do not support snowshoe hares) that occurs between

patches of boreal forest in close juxtaposition (at the scale of a lynx home range) such that lynx are likely to travel through such habitat while accessing patches of boreal forest within a home range.

This critical habitat designation is designed for the conservation of the physical and biological features essential to the conservation of the lynx and necessary to support lynx life history functions. The physical and biological features, described in the PCE defined above, comprise the essential features of boreal forest that (1) provide adequate prey resources necessary for the persistence of local populations and metapopulations of lynx through reproduction; (2) act as a possible source of lynx for more peripheral boreal forested areas; (3) enable the maintenance of home ranges; (4) incorporate snow conditions for which lynx are highly specialized that give lynx a competitive advantage over potential competitors; (5) provide denning habitat; and (6) provide habitat connectivity for travel within home ranges, exploratory movements, and dispersal within critical habitat units. Lynx use habitat at a landscape scale, which means that no single locality (small scale) contains all of the required habitat elements that lynx need to ensure survival and reproduction. Therefore, individual portions of each unit (for example, an individual forest stand) may not contain all of the PBFs listed above, however, each unit, as a landscape, does contain each of the PBFs and it is the landscape as a whole that contains the PCE.

#### **Special Management Considerations or Protections**

When designating critical habitat, we assess whether the areas occupied by the species at the time of listing contain the physical and biological features that are essential to the conservation of the species, and whether these features may require special management considerations or protections.

Lands within the revised critical habitat will require some level of management to address the current and future threats to the lynx and to maintain and protect the physical and biological features essential to the conservation of the species. In all units, special management will be required to ensure that boreal forest landscapes provide a mosaic of forest stands of various ages to provide abundant prey habitat, denning habitat, and connectivity within the landscape. The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in

the conservation of the lynx. Federal activities that may affect areas outside of critical habitat, such as forest management, development, and road construction, are still subject to review under section 7 of the Act if they may affect lynx, because Federal agencies must consider effects to lynx and effects to critical habitat independently. The take prohibitions of section 9 of the Act (e.g., harm, harass, capture, kill) also continue to apply both inside and outside of designated critical habitat.

Special management direction for lynx has been applied to public lands in much of the lynx DPS. The U.S. Forest Service (USFS), Bureau of Land Management (BLM), National Park Service (NPS), and the Service developed a Lynx Conservation Assessment and Strategy (LCAS) (Ruediger *et al.* 2000, entire) using the best available science at the time specifically to provide a consistent and effective approach to conserve lynx and lynx habitat on Federal lands (Ruediger *et al.* 2000). The overall goals of the LCAS are to recommend lynx conservation measures, to provide a basis for reviewing the adequacy of USFS and BLM land and resource management plans with regard to lynx conservation, and to facilitate conferencing and consultation under section 7 of the Act. The LCAS identifies an inclusive list of 17 potential risk factors for lynx or lynx habitat that may be addressed under programs, practices, and activities within the authority and jurisdiction of Federal land management agencies. The risks identified in the LCAS are based on effects to individual lynx, lynx populations, or to lynx habitat. Potential risk factors the LCAS addresses, that may affect lynx productivity, include: Timber management, wildland fire management, recreation, forest/backcountry roads and trails, livestock grazing, and other human developments. Potential risk factors the LCAS addresses, that may affect lynx mortality, include: Trapping, predator control, incidental or illegal shooting, and competition and predation as influenced by human activities and highways. Potential risk factors the LCAS addresses, that may affect lynx movement, include: Highways, railroads and utility corridors, land ownership pattern, and ski areas and large resorts. Other potential large-scale risk factors for lynx addressed by the LCAS include: Fragmentation and degradation of lynx refugia, lynx movement and dispersal across shrub-steppe habitats, and habitat degradation by nonnative and invasive plant species.

The LCAS used the best available information in 2000 to ensure that the appropriate mosaic of habitat is provided for lynx conservation on Federal lands. Although the LCAS was written specifically for Federal lands, many of the conservation measures could be pertinent to non-Federal lands. To facilitate project planning and allow for the assessment of the potential effects of a project on an individual lynx, the LCAS directs Federal land management agencies to delineate Lynx Analysis Units (LAUs). The scale of an LAU approximates the size of area used by an individual lynx (25 to 50 mi<sup>2</sup> (65 to 130 km<sup>2</sup>)). The LCAS recognizes that LAUs will likely encompass both lynx habitat and other areas (e.g., lakes, low elevation ponderosa pine (*Pinus ponderosa*) forest, and alpine tundra). Habitat-related standards the LCAS provides to address potential risks include:

1. If more than 30 percent of lynx habitat in an LAU is currently in unsuitable condition, no further reduction of suitable condition shall occur as a result of vegetation management activities by Federal agencies;
2. Within an LAU, maintain denning habitat in patches generally larger than 5 ac (2 ha), comprising at least 10 percent of lynx habitat;
3. Maintain habitat connectivity within and between LAUs;
4. Management actions (e.g., timber sales, salvage sales) shall not change more than 15 percent of lynx habitat within an LAU to an unsuitable condition within a 10-year period;
5. Pre-commercial thinning will only be allowed when stands no longer provide snowshoe hare habitat; and
6. On Federal lands in lynx habitat, allow no net increase in groomed or designated over-the-snow routes and snowmobile play areas by LAU.

With the listing of the lynx in 2000, Federal agencies across the contiguous United States range of the lynx were required to consult with the Service on actions that may affect lynx. The LCAS assists Federal agencies in planning activities and projects in ways that benefit lynx or avoid adverse impacts to lynx or lynx habitat (Ruediger *et al.* 2000). If projects are designed that fail to meet the standards in the LCAS, the biologists using the LCAS would arrive at an adverse effect determination for lynx.

A Conservation Agreement between the USFS and the Service (U.S. Forest Service and U.S. Fish and Wildlife Service 2000) and a similar Agreement between the BLM and the Service (Bureau of Land Management and U.S.

Fish and Wildlife Service 2000) committed the USFS and BLM to use the LCAS in determining the effects of actions on lynx until Forest Plans were amended or revised to adequately conserve lynx. A programmatic biological opinion pursuant to section 7 of the Act confirmed the adequacy of the LCAS and its conservation measures to conserve lynx, and concluded that USFS and BLM land management plans, as implemented in accordance with the Conservation Agreements, would not jeopardize the continued existence of lynx (U.S. Fish and Wildlife Service 2000).

In 2005, the USFS and the Service renewed the conservation agreement (U.S. Forest Service and U.S. Fish and Wildlife Service 2005) because the original agreement had expired. In the 2005 agreement, the parties agreed to take measures to reduce or eliminate adverse effects or risks to lynx and its occupied habitat pending amendments to Forest Plans. The LCAS is a basis for implementing this agreement (U.S. Forest Service and U.S. Fish and Wildlife Service 2005). The 2005 agreement was renewed on October 20, 2006, and expires December 31, 2010, unless renewed. The BLM continues to adhere to their original agreement although it expired in December 2004.

Lynx conservation depends on management that supports boreal forest landscapes of sufficient size to encompass the temporal and spatial changes in habitat and snowshoe hare populations to support interbreeding lynx populations or metapopulations over time. At the time it was written, the LCAS provided the highest level of management or protection for lynx. The LCAS conservation measures address risk factors affecting lynx habitat and lynx productivity and were designed to be implemented at the scale necessary to conserve lynx. This level of management is appropriate for Federal lands, because they account for the majority of high-quality habitat in the United States, and also because the inadequacy of regulatory mechanisms to conserve lynx on these lands was the primary reason for listing the lynx as a threatened species under the Act. New information has become available since the LCAS was written, and should be taken into account by land managers. Kolbe *et al.* (2007) and Bunnell *et al.* (2006) published information on the effects of snowmobiling on lynx, and Squires *et al.* (2006) documented the importance of multilayered stands as snowshoe hare habitat. Ongoing research in Minnesota and Maine has resulted in information that contributes to our understanding of lynx and

snowshoe hares (e.g., Moen *et al.* 2004; Hoving *et al.* 2005; Homyack *et al.* 2007; Fuller *et al.* 2007). In some regions of Wyoming, Washington and Maine, research continues. As new information becomes available, it should be added to that in the LCAS.

The USFS considered some of the new information discussed above when it proposed to revise 18 Forest Plans under a programmatic plan amendment called the Northern Rocky Mountain Lynx Amendment (NRLA) (U.S. Forest Service 2007). Some of the LCAS standards were changed to guidelines because the Service determined that some risk factors were not negatively affecting the contiguous U.S. DPS of lynx as a whole. Since publication of the LCAS, lynx studied in the United States have been shown to use a variety of sites and conditions for denning. Lynx denning sites are not believed to be a limiting factor in Montana and Maine study areas (Service 2007, pp. 48–49). Earlier assessments also concluded that, in most geographic areas, denning habitat was not likely limiting to lynx, and existing forest plan direction would not result in adverse effects (Hickenbottom *et al.* 1999). After evaluating Bunnell *et al.* (2006, entire) and Kolbe *et al.* (2007, entire), we determined that the best information available did not indicate that compacted snow routes increase competition from other species to levels that adversely impact lynx populations in the NRLA area (Service 2007, pp. 55). Since the LCAS was written, new information revealed the importance of multi-storied stands for lynx (Squires *et al.* 2006). On the basis of the above information, the USFS included a standard for conserving multi-storied stands in the NRLA. This LCAS does not contain this standard.

In addition to diverging from the standards in the LCAS because of new information, the NRLA also deviated from the LCAS by allowing additional fuels reduction projects in areas within the wildlands-urban-interface (WUI). In our analysis of the NRLA, we determined that the management in the NRLA area would provide for the recovery of lynx in these areas by addressing the major reason we listed the lynx in 2000—the lack of guidance for conservation of lynx in Federal land management plans. Consultation under section 7 of the Act was completed for the NRLA in 2007, and it is now official land management direction for the National Forests that adopted it.

In Maine, lynx populations occur in extensive boreal forest landscapes where large, contiguous stands of young, regenerating spruce-fir habitat

are prevalent and support high densities of snowshoe hares. Historically, habitat was likely created by natural forest disturbances, fire, insects and disease, and windthrow. Most of the lynx in Maine occur on private, industrial forest lands. Large-scale, industrial forest management has created the current habitat, and future forest management that produces extensive stands supporting high hare densities is needed to support lynx populations. The Service developed *Canada Lynx Habitat Management Guidelines for Maine* (McCollough 2007, entire). These guidelines specify the special management—recommendations on land use, forest conditions, landscape conditions, and silviculture requirements—needed to support lynx populations based on the best available science (see discussion of Healthy Forest Reserve Program for further details).

#### Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we used the best scientific data available to designate critical habitat. In order to determine those specific areas occupied by the species at the time it was listed on which are found those physical or biological features essential to the conservation of the species, as required by section 3(5)(a)(i) of the Act, we reviewed the approach to the conservation of the lynx provided in a recovery outline (Service 2005, entire); information from State, Federal and Tribal agencies; and information from academia and private organizations that have collected scientific data on lynx.

The focus of our strategy in considering lands for designation as critical habitat was on boreal forest landscapes of sufficient size to encompass the temporal and spatial changes in habitat and snowshoe hare populations to support interbreeding lynx populations or metapopulations over time. These factors are included in the PCE for lynx. According to the recovery strategy, areas that meet these criteria are considered “core habitat areas” for lynx (USFWS 2005, p. 4); however, for critical habitat, we have refined areas based on evidence of breeding populations. As stated in the proposed rule, the areas we consider essential to the conservation of lynx have the physical and biological features essential to lynx in sufficient quantity and spatial arrangement, as evidenced by consistent occupancy and reproduction by lynx. We focused on consistency of lynx presence and reproduction, because areas with these characteristics represent resiliency

during population lows, which is key to the species’ survival. Areas that meet these criteria contrast with areas that may serve as temporary habitat for unsuccessful dispersers during population highs, but do not support lynx reproduction, and therefore are not likely to play a role in lynx conservation. Individual lynx maintain large home ranges; the areas identified as having features essential to the conservation of the lynx are large enough to encompass multiple home ranges. A secondary consideration is that, in addition to supporting breeding populations, these areas provide connectivity among patches of suitable habitat (e.g., patches containing abundant snowshoe hares), whose locations in the landscape shift through time. Areas that have historical records of lynx, but no record of reproduction, and that support lynx during dispersal movements, are considered “secondary areas” (USFWS 2005, p. 4). Areas outside core and secondary areas that have sporadic records of lynx are considered “peripheral areas” (USFWS 2005, p. 4).

We reviewed available information that pertains to the habitat requirements of this species and its principal prey, the snowshoe hare. This information included data in reports submitted by researchers holding recovery permits under section 10(a)(1)(A) of the Act; research published in peer-reviewed articles, presented in academic theses, agency reports and unpublished data; and various Geographic Information System (GIS) coverages (e.g., land cover type information, land ownership information, snow depth information, topographic information, locations of lynx obtained from radio-or GPS-collars and locations of lynx confirmed via DNA analysis or other verified records).

In designating critical habitat for the lynx we used the best scientific data available to evaluate areas that possess the physical and biological features essential to the conservation of the species and that may require special management considerations or protection. In evaluating areas as critical habitat, we first conducted a two-part analysis: (1) We relied on information used during listing of the species, and any available newer information, to delineate the geographic area occupied by the species at the time of listing, and (2) used the best available scientific information to determine which occupied areas contain the physical and biological features essential to the conservation of the lynx.

In determining the geographic area occupied by the species, we utilized data providing verified evidence of the

occurrence of lynx and evidence of the presence of breeding lynx populations as represented by records of lynx reproduction. We find that evidence of breeding populations is the best way to verify that the physical and biological features essential to lynx are present in sufficient quantity and spatial configuration to meet the needs of the species, and qualify as critical habitat. We eliminated areas from consideration in two ways: (1) Areas outside the known historical range and (2) data older than 1995 were not considered valid to our assessment of occurrence and reproduction of lynx. We used data on the known historical range of the lynx (e.g., McKelvey *et al.* 2000b, pp. 207–232; Hoving *et al.* 2003, entire) to eliminate areas outside the historical range of the species.

We then focused on records since 1995 to ensure that this critical habitat designation is based on the data that most closely represents the current status of lynx in the contiguous United States and the geographical area known to be occupied by the species at the time of listing. Although the average lifespan of a wild lynx is not known, we assumed that a lynx born in 1995 could have been alive in 2000 or 2003, when the final listing rule and the clarification of findings were published. Data after 1995 were considered valid. Recent verified lynx occurrence records were provided by Federal research entities, State wildlife agencies, academic researchers, and private individuals or organizations working on lynx (K. Aubry, Pacific Northwest Research Station, unpubl. data; S. Gehman, Wildthings Unlimited, unpubl. data; S. Gniadek, Glacier National Park, unpubl. data; S. Loch, Independent Scientist, and E. Lindquist, Superior National Forest, unpubl. data; K. McKelvey, Rocky Mountain Research Station; unpubl. data; Minnesota DNR 2005 Web site; R. Moen, University of Minnesota, Natural Resources Research Institute, unpubl. data.; J. Squires, Rocky Mountain Research Station, unpubl. data; J. Vashon, Maine Department of Inland Fisheries and Wildlife, unpubl. data).

We used only verified lynx records, because we wanted to rely on the best available data to evaluate specific areas and their features for critical habitat designation. The reliability of lynx occurrence reports can be questionable because the bobcat, a common species, can be confused with the lynx, which is similar in appearance. Additionally, many surveys are conducted by snow tracking in which correct identification of tracks can be difficult because of variable conditions affecting the quality

of the track and variable expertise of the tracker. Our definition of a verified lynx record is modified from McKelvey *et al.* (2000b, p. 209)—(1) an animal (live or dead) in hand or observed closely by a person knowledgeable in lynx identification, (2) genetic (DNA) confirmation, (3) snow tracks only when confirmed by genetic analysis (e.g., McKelvey *et al.* 2006, entire) or (4) location data from radio or GPS-collared lynx. Documentation of lynx reproduction consists of lynx kittens in hand, or observed with the mother by someone knowledgeable in lynx identification, or snow tracks demonstrating family groups traveling together, as identified by a person highly knowledgeable in identification of carnivore tracks. However, we made an exception and accepted snow track data from Maine because of the stringent protocols used in confirming tracks as lynx and the minimal number of species in the area with which lynx tracks could be misidentified (McCollough 2006, entire).

To define critical habitat according to section 3(5)(A) of the Act, we then delineated, within the geographical area currently occupied by the species at the time of listing, areas containing physical and biological features essential to the conservation of the lynx. The physical and biological features (as defined above under Primary Constituent Elements) were determined by including recent lynx records, evidence of breeding lynx populations, the boreal forest type that is currently occupied by lynx in that particular region, and direct connectivity with lynx populations in Canada. Lynx populations in the contiguous United States are influenced by lynx population dynamics in Canada (Thiel 1987; McKelvey *et al.* 2000a, p. 427, 2000c, p. 33). Many of these populations in Canada are directly interconnected with United States populations and are likely a source of emigration into the contiguous United States; lynx from the contiguous United States are known to move into Canada. Therefore, we assume that retaining connectivity with larger lynx populations in Canada is important to ensuring long-term persistence of lynx populations in the United States. We assume that, regionally, lynx within the contiguous United States and adjacent Canadian provinces interact as metapopulations. Where available, data on historic average snow depths and bobcat harvest provided additional insight for refining and delineating appropriate boundaries for consideration as critical habitat.

In the North Cascades and Northern Rockies, the features essential to the

conservation of lynx, the majority of lynx records, evidence of reproduction, and the boreal forest types are typically, though not always, found above 4,000 feet (ft) (1,219 meters [m]) in elevation (McKelvey *et al.* 2000b, pp. 243–245; McAllister *et al.* 2000, entire). Thus, we limited the delineation of critical habitat to lands above this elevation unless we had habitat data indicating that suitable habitat exists below this elevation. Additionally, in the North Cascades, features essential to the conservation of the lynx and the majority of the lynx records and evidence of reproduction occur east of the crest of the Cascade Mountains.

Based on comments received, the availability of better maps and inspection of aerial photos, we adjusted some boundaries of the areas proposed for critical habitat to better reflect the distribution of lynx habitat. The boundaries are modified in Units 2 (Minnesota), 3 (northern Rockies), and 5 (GYA) to better reflect the location of the PCE through the use of new habitat mapping data obtained from State and Federal agencies and private industry. Boundaries in Units 1 (Maine) and 4 (Washington) remained the same with the exception of 4(b)(2) exclusions (discussed in Exclusions Under Section 4(b)(2) of the Act section below).

Given the scale of the critical habitat units, it was not feasible to completely avoid inclusion of water bodies, including lakes, reservoirs and rivers, grasslands, or human-made structures such as buildings, paved and gravel roadbeds, parking lots, and other structures that lack the PCE for the lynx. These areas, including any developed areas and the land on which such structures are located, that exist inside critical habitat boundaries, are excluded by text and are not designated critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species or primary constituent element in adjacent critical habitat.

When considering what areas to include as critical habitat, we focused closely on areas with reliable evidence of lynx occurrence and reproduction since 1995. For example, because there is no verified evidence of lynx occupation or reproduction in New Hampshire or western Maine since 1995, we did not consider these areas to have the physical and biological features essential to lynx. In addition, while evaluating information for the critical habitat proposal, we received bobcat harvest data for Minnesota showing abundant bobcat harvest and a lack of lynx presence in the area west of the critical habitat unit in Minnesota,

which suggests the western portion of the area preliminarily delineated as core habitat in Minnesota may not be of high quality for lynx.

We determined that the Kettle Range in north-central Washington does not contain the physical and biological features essential to lynx in viable quantity and spatial arrangement, and therefore we did not include it in our proposed or final revised critical habitat rules. The Kettle Range historically (through the 1970s) supported lynx populations (Stinson 2001, pp.13–14). However, although boreal forest habitat within the Kettle Range appears to contain high quality habitat for lynx, there is no evidence that the Kettle Range is currently occupied by a reproducing lynx population (Koehler 2005 entire). In particular, while we continue to receive sporadic reports from the area, we have no information to suggest a lynx population has occupied the Kettle range since 1995, so it did not meet our criteria for consideration as critical habitat. Therefore, we did not include the Kettle Range in our critical habitat designation.

Native lynx were extirpated from their historic range in Colorado and southern Wyoming in the Southern Rocky Mountains by the time the lynx was listed in 2000. In 1999, the State of Colorado began to reintroduce lynx. Subsequent to the release, lynx have dispersed to many areas of varying habitat quality, such as to the Great Plains in Nebraska, the Wasatch Range in Utah, and San Juan Mountains of New Mexico. Although it is too early to determine whether the Colorado introduction will result in a self-sustaining population, the reintroduced lynx produced kittens in the early years of the program. Over the last several years, reproduction has been very low, suggesting that the population may not be viable (Shenk 2007, p. 1) and that absent ingress from Canadian populations to the north, viability of any of the contiguous U.S. lynx populations may be suspect (Murray *et al.* 2008). Due to the distances lynx must cover to reach the southern Rockies from other occupied and reproductive populations, we are still unable to conclude that this region has the necessary habitat to maintain a lynx population. We determined that the marginal habitat in the Southern Rockies, and habitat not within the historical range of lynx where these animals have dispersed outside of Colorado, are not essential to the conservation of lynx because they likely lack the quantity and spatial arrangement of physical and biological features essential to the species.

Many areas within the contiguous United States have one or more individual lynx records with no evidence of persistent, reproducing lynx populations. It is possible, though unlikely, that some of these areas may support undocumented persistent populations of lynx. However, most of these records are likely a result of wide-ranging dispersal events, occur in habitat that is less suitable for lynx than in the core areas, and are mostly disjunct from areas that contain persistent lynx populations. We consider these areas as secondary or peripheral (as defined in the Recovery Outline), and their role in sustaining persistent lynx populations is unclear; such areas may provide habitat to dispersing lynx, especially when populations are at a cyclic high. The areas we consider essential to the conservation of lynx have the PCE, which provide for the ability to maintain and produce lynx during population lows. Due to their lack of demonstrated ability to provide the PCE for conservation of the species, we do

not believe that secondary and peripheral areas meet the definition of critical habitat for lynx.

Secondary and peripheral areas contain only periodic records of lynx over time, and they lack evidence of reproducing lynx populations. Habitat suitability for lynx has not been assessed throughout the secondary and peripheral areas, so we are not certain whether the essential features (i.e., PCE) are present. However, the relative lack of lynx records over time, and, in particular the lack of evidence of reproducing populations, may suggest that habitat (snowshoe hare densities, in particular) has not been adequate historically, nor is it currently adequate, to support reproducing lynx populations. Additionally, some of the peripheral areas are naturally disjunct and support few historical records of lynx.

#### Critical Habitat Designation

We are designating five units as critical habitat for the lynx (Table 1). The critical habitat units described below constitute our best assessment at

this time of areas: (1) We determined to be occupied at the time of listing, (2) that contain the physical and biological features (i.e., the primary constituent element in the appropriate spatial arrangement and quantity) essential for the conservation of the species, and (3) that may require special management considerations or protection. The five areas designated as critical habitat are Unit 1 in northwestern Maine, Unit 2 in the Arrowhead region of Minnesota, Unit 3 in Montana and Idaho, Unit 4 in the North Cascades of Washington, and Unit 5 in the Greater Yellowstone Area of Wyoming, Montana, and Idaho. To further understand the location of these designated areas, please see the associated maps found within this final rule (also available at our Web site: <http://mountain-prairie.fws.gov/species/mammals/lynx/>). Table 1 shows the critical habitat unit areas, area that was proposed for designation, approximate area being excluded from the designation, land ownership, and the approximate area being designated as critical habitat.

TABLE 1—CRITICAL HABITAT UNITS DESIGNATED FOR THE LYNX

Critical habitat units	Area proposed for designation km <sup>2</sup> (mi <sup>2</sup> )	Excluded area km <sup>2</sup> (mi <sup>2</sup> )	Land ownership	Area designated km <sup>2</sup> (mi <sup>2</sup> )
Unit 1: Maine .....	27,539.1 (10,632.9)	2,884.0 (1,113.5)	Private, State, Federal .....	24,597.5 (9,497.2)
Unit 2: Minnesota .....	21,305.4 (8,226.1)	202.6 (78.2)	Federal, Private, State .....	20,888.4 (8,065.1)
Unit 3: Northern Rocky Mountains (MT and ID) .....	29,276.5 (11,303.7)	956.6 (369.4)	Federal, Private, State .....	26,162.9 (10,101.6)
Unit 4: North Cascades .....	5,179.7 (1,999.9)	424.7 (164.0)	Federal, Private .....	4,755.0 (1,835.9)
Unit 5: Greater Yellowstone Area .....	27,427.4 (10,589.8)	0 (0)	Federal, State, Private .....	24,606.1 (9,500.5)
Total .....	110,728.1 (42,752.4)	4,467.9 (1,725.1)	.....	101,009.9 (39,000.3)

We provide a brief description of all units, and reasons why they meet the definition of critical habitat for the Canada lynx. The section that follows explains our decision to exclude certain lands pursuant to Section 4(b)(2) of the Act.

#### *Unit 1: Northern Maine—24,597 km<sup>2</sup> (9,497 mi<sup>2</sup>)*

Unit 1 is located in northern Maine in portions of Aroostook, Franklin, Penobscot, Piscataquis, and Somerset Counties. This area was occupied by the lynx at the time of listing and is currently occupied by the species. Lynx in northwestern Maine have high productivity: 91 percent of available adult females (greater than 2 years)

produced litters, and litters averaged 2.83 kittens (Vashon *et al.* 2005b, pp. 4–6). This area contains the physical and biological features essential to the conservation of the lynx as it is comprised of the primary constituent element and its components laid out in the appropriate quantity and spatial arrangement. This area is also important for lynx conservation because it is the only area in the northeastern region of the lynx's range within the contiguous United States that currently supports breeding lynx populations and likely acts as a source or provides connectivity for more peripheral portions of the lynx's range in the Northeast. Timber harvest and management is the dominant land use within the unit;

therefore, special management is required depending on the silvicultural practices conducted (68 FR 40075; July 3, 2003). Timber management practices that provide for a dense understory are beneficial for lynx and snowshoe hares. In this area, other habitat-related threats to lynx are lack of an International conservation strategy for lynx, traffic, and development (68 FR 40075).

#### *Unit 2: Northeastern Minnesota—20,888 km<sup>2</sup> (8,065 mi<sup>2</sup>)*

Unit 2 is located in northeastern Minnesota in portions of Cook, Koochiching, Lake, and St. Louis Counties, and Superior National Forest. In 2003, when we last formally reviewed the status of the lynx,

numerous verified records of lynx existed from northeastern Minnesota (68 FR 40076, July 3, 2003). The area was occupied at the time of listing and is currently occupied by the species. Lynx are currently known to be distributed throughout northeastern Minnesota, as has been confirmed through DNA analysis, radio- and GPS-collared animals, and documentation of reproduction (Moen *et al.* 2004, entire; Minnesota DNR 2005, entire; S. Loch, unpubl. data; Minnesota Department of Natural Resources, unpubl. data). This area contains the physical and biological features essential to the conservation of the lynx as it is comprised of the primary constituent element and its components laid out in the appropriate quantity and spatial arrangement. This area is essential to the conservation of lynx because it is the only area in the Great Lakes region for which we have evidence of recent lynx reproduction. It likely acts as a source or provides connectivity for more peripheral portions of the lynx's range in the region. Timber harvest and management is a dominant land use (68 FR 40075). Therefore, special management is required depending on the silvicultural practices conducted. Timber management practices that provide for a dense understory are beneficial for lynx and snowshoe hares. In this area, lack of an International conservation strategy for lynx, fire suppression or fuels treatment, traffic, and development are other habitat-related threats to lynx (68 FR 40075).

Specific sections of land encompassing a mining district in Minnesota known as the Iron Range are not included in this revised designation because they do not contain the physical and biological features essential to the conservation of lynx. In much of the Iron Range, mining has removed all vegetation and much of this area was subsequently flooded. Areas that are still vegetated and not flooded are extensively fragmented by the mined areas and haul roads. We used the "GAP Land Cover—Tiled Raster" dataset (Minnesota Department of Natural Resources 2002) to identify sections that are heavily influenced by mining activities. Areas described as "Barren" and "Mixed Developed" in the GAP dataset seemed to correspond to areas that were mined or extensively disturbed by mining-related activities (e.g., service roads), based on aerial photos (National Agricultural Imagery Program 2003). Further inspection of aerial photos indicates that additional sections exist with extensive effects of mining, beyond that indicated by the

GAP data, which is based on 10–15-year-old satellite imagery. These disturbed areas are not included in this final designation and are reflected in the final maps provided with the rule and in the unit boundary description.

*Unit 3: Northern Rocky Mountains  
26,163 km<sup>2</sup> (10,102 mi<sup>2</sup>)*

Unit 3 is located in northwestern Montana and a small portion of northeastern Idaho in portions of Boundary County in Idaho and Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Pondera, Powell and Teton Counties in Montana. It includes National Forest lands and BLM lands in the Garnet Resource Area. This area was occupied by lynx at the time of listing and is currently occupied by the species. Lynx are known to be widely distributed throughout this unit and breeding has been documented in multiple locations (Gehman *et al.* 2004, pp. 24–29; Squires *et al.* 2004a, pp. 7–10 and 2004b, pp. 8–10). This area contains the physical and biological features essential to the conservation of the lynx as it is comprised of the primary constituent element and its components laid out in the appropriate quantity and spatial arrangement. This area is essential to the conservation of lynx because it appears to support the highest density lynx populations in the Northern Rocky Mountain region of the lynx's range. It likely acts as a source for lynx and provides connectivity to other portions of the lynx's range in the Rocky Mountains, particularly the Yellowstone area. Timber harvest and management is a dominant land use (68 FR 40075); therefore, special management is required depending on the silvicultural practices conducted. Timber management practices that provide for a dense understory are beneficial for lynx and snowshoe hares. In this area, fire suppression or fuels treatment, lack of an International conservation strategy for lynx, traffic, and development are other habitat-related threats to lynx (68 FR 40075).

*Unit 4: North Cascades 4,755 km<sup>2</sup> (1,836 mi<sup>2</sup>)*

Unit 4 is located in north-central Washington in portions of Chelan and Okanogan Counties, and includes BLM lands in the Spokane District. This area was occupied at the time lynx was listed and is currently occupied by the species. This unit supports the highest densities of lynx in Washington (Stinson 2001). Evidence from limited recent research and DNA shows lynx distributed within this unit, with breeding being documented (von Kienast 2003, p. 36; K. Aubry, Pacific

Northwest Research Station, unpubl. data; B. Maletzke, Washington State University, unpubl. data). Although there appear to be fewer records in the portion of the unit south of Highway 20, few surveys have been conducted in this portion of the unit. This area contains boreal forest habitat and the components essential to the conservation of the lynx. Further, it is contiguous with the portion of the unit north of Highway 20, particularly in winter when deep snows close Highway 20. The northern portion of the unit adjacent to the Canadian border also appears to support few recent lynx records; however, it is designated wilderness, so access to survey this area is difficult. This northern portion contains extensive boreal forest vegetation types and the components essential to the conservation of the lynx. Additionally, lynx populations exist in British Columbia directly north of this unit (E. Lofrothe, British Columbia Ministry of the Environment, unpubl. data).

This area contains the physical and biological features essential to the conservation of the lynx as it contains the primary constituent element and its components laid out in the appropriate quantity and spatial arrangement. This area is essential to the conservation of lynx because it is the only area in the Cascades region of the lynx's range that is known to support breeding lynx populations. Timber harvest and management is a dominant land use; therefore, special management is required depending on the silvicultural practices conducted. Timber management practices that provide for a density understory are beneficial for lynx and snowshoe hares. In this area, Federal land management plans have not been amended to incorporate lynx conservation. The lack of an International conservation strategy for lynx, traffic, and development are other habitat-related threats to lynx (68 FR 40075).

*Unit 5: Greater Yellowstone Area 24,606 km<sup>2</sup> (9,500 mi<sup>2</sup>)*

Unit 5 is located in Yellowstone National Park and surrounding lands in southwestern Montana and northwestern Wyoming. Lands in this unit are found in Gallatin, Park, Sweetgrass, Stillwater, and Carbon Counties in Montana, and Park, Teton, Fremont, Sublette, and Lincoln Counties in Wyoming. This area was occupied by lynx at the time of listing and is currently occupied by the species. The area contains the physical and biological features essential to the conservation of the lynx. The GYA is

naturally marginal lynx habitat with highly fragmented foraging habitat. For this reason lynx home ranges in this unit are likely to be larger and incorporate large areas of non-foraging matrix habitat. In this area, fire suppression or fuels treatment, lack of an International conservation strategy for lynx, traffic, and development are other habitat-related threats to lynx (68 FR 40075). Therefore, special management is required depending on the fire suppression and fuels treatment practices conducted and the design of highway development projects.

## Effects of Critical Habitat Designation

### Section 7 Consultation

Section 7 of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat. Decisions by the Fifth and Ninth Circuit Court of Appeals have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service* 378 F.3d 1059 (9th Cir 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on our regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

Under section 7(a)(2) of the Act, if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must analyze the effects of their action on the listed species. If the action may adversely affect listed species, the Federal agency must enter into consultation with us. As a result of this consultation, we may document compliance with the requirements of section 7(a)(2) through our issuance of:

1. A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or
2. A biological opinion for Federal actions likely to adversely affect listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a

listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define "Reasonable and prudent alternatives" at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistently with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinstate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinstatement of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the lynx or its designated critical habitat will require section 7(a)(2) consultation under the Act. Activities on State, tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or involving some other Federal action (such as funding from the Federal Highway Administration, the Federal Aviation Administration, or the Federal Emergency Management Agency) or a permit from us under section 10(a)(1)(B) of the Act) will also be subject to the consultation process under section 7(a)(2) of the Act. Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local or private lands that are not Federally funded, authorized, or carried

out, do not require section 7(a)(2) consultations.

### Application of the "Adverse Modification Standard"

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve the intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for lynx. Generally, the conservation role of lynx critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat, and therefore, should result in consultation, include, but are not limited to:

1. Actions that would reduce or remove understory vegetation within boreal forest stands on a scale proportionate to the large landscape used by lynx. Such activities could include, but are not limited to, forest stand thinning, timber harvest, and fuels treatment of forest stands. These activities could significantly reduce the quality of snowshoe hare habitat such that the landscape's ability to produce adequate densities of snowshoe hares to support persistent lynx populations is at least temporarily diminished.

2. Actions that would cause permanent loss or conversion of the boreal forest on a scale proportionate to the large landscape used by lynx. Such activities could include, but are not limited to, recreational area developments; certain types of mining activities and associated developments; and road building. Such activities could eliminate and fragment lynx and snowshoe hare habitat.

3. Actions that would increase traffic volume and speed on roads that divide lynx critical habitat. Such activities could include, but are not limited to, transportation projects to upgrade roads or development of a new tourist destination. These activities could reduce connectivity within the boreal forest landscape for lynx, and could

result in increased mortality of lynx within the critical habitat units, because lynx are highly mobile and frequently cross roads during dispersal, exploratory movements, or travel within their home ranges.

In matrix habitat, activities that change vegetation structure or condition would not be considered an adverse effect to lynx critical habitat unless those activities would create a barrier or impede lynx movement between patches of foraging habitat and between

foraging and denning habitat within a potential home range, or if they would adversely affect adjacent foraging habitat or denning habitat. For example, a pre-commercial thinning or fuels reduction project in matrix habitat would not adversely affect lynx critical habitat, and would not require consultation. However, a new highway passing through matrix habitat that would impede lynx movement may be an adverse effect to lynx critical habitat, and would require consultation. The

scale of any activity should be examined to determine whether direct or indirect alteration of habitat would occur to the extent that the value of critical habitat for the survival and recovery of lynx would be appreciably diminished.

If you have questions regarding whether specific activities may constitute destruction or adverse modification of critical habitat, contact the Supervisor of the appropriate Ecological Services Field Office (see list below).

State	Address	Phone number
MAINE .....	1168 Main Street, Old Town, Maine 04468 .....	(207) 827-5938
MINNESOTA .....	4101 East 80th Street, Bloomington, Minnesota 55425 .....	(612) 725-3548
MONTANA .....	585 Shepard Way, Helena, Montana 59601 .....	(406) 449-5225
WASHINGTON AND IDAHO .....	11103 E. Montgomery Drive, Spokane, Washington 99206 .....	(509) 893-8015
WYOMING .....	5353 Yellowstone Road, Suite 308A, Cheyenne, Wyoming 82009 .....	(307) 772-2374

All of the units designated as critical habitat, as well as specific areas that have been excluded, contain features essential to the conservation of the lynx. All units are within the geographical range of the species, and all are currently occupied by the species based on based on surveys and research documenting the presence and reproduction of lynx (68 FR 40076, July 3, 2003). Under section 7 of the Act, Federal agencies already consult with us on activities in areas currently occupied by the lynx, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the lynx.

#### Application of Section 4(a)(3) of the Act

The Sikes Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and

applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands with a completed INRMP within the critical habitat designation, and therefore, no analysis of potential exclusions under section 4(a)(3) of the Act is necessary.

#### Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate or revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part

of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute, as well as the legislative history, is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the specific area in the designation, identify the benefits of excluding the specific area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If, based on this analysis, we determine that the benefits of exclusion would outweigh the benefits of inclusion of an area, we can then exclude the area only if such exclusions would not result in the extinction of the species.

Under section 4(b)(2) of the Act, we must consider all relevant impacts, including economic impacts. We consider a number of factors in a section 4(b)(2) analysis. For example, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. We also consider whether the landowners have developed any conservation plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities.

We also consider any social impacts that might occur because of the designation.

We determined that lands managed under the Maine Healthy Forest Reserve Program and lands managed by the State of Washington Department of Natural Resources (WADNR) should be excluded from the final designation based on the management plans that govern activities on these lands. Tribal lands have also been excluded from the final designation based on Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997).

#### Benefits of Designating Critical Habitat

The process of designating critical habitat as described in the Act requires that the Service identify those lands on which are found the physical or biological features essential to the conservation of the species that may require special management considerations or protection, and those areas outside the geographical area occupied by the species at the time of listing that are essential to the conservation of the species. In identifying those lands, the Service must consider the recovery needs of the species, such that, on the basis of the best scientific and commercial data available at the time of designation, the habitat that is identified, if managed, could provide for the survival and recovery of the species.

A critical habitat designation may be beneficial—identification of areas that are essential for the conservation of the species can, if managed, provide for the recovery of a species. The process of proposing and finalizing a critical habitat rule provides the Service with the opportunity to determine the physical and biological features essential to the conservation of the species within the geographical area occupied by the species at the time of listing, as well as to determine other areas essential for the conservation of the species. The designation process includes peer review and public comment on the identified physical and biological features and essential areas. This process is valuable to land owners and managers in developing conservation or management plans for identified areas, as well as any other occupied habitat or suitable habitat that may not have been included in the Service's determination of essential habitat.

A critical habitat designation may provide a regulatory benefit. The consultation provisions under section 7(a)(2) of the Act constitute the regulatory benefits of critical habitat. As

discussed above, Federal agencies must consult on discretionary actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult on discretionary actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, any difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar, because effects on habitat will often also result in effects on the species. However, the regulatory standard of impacts to the species, and impacts to critical habitat, are different.

An analysis of effects on the species requires a determination of whether the impact will jeopardize the species' survival; an analysis of effects to critical habitat requires a determination of whether the impact will adversely modify the habitat in a way that will affect both the conservation of the species, and its recovery. This difference in regulatory standards was emphasized in the Ninth Circuit's decision in *Gifford Pinchot Task Force v. FWS* (9th Cir. 2004). Therefore, critical habitat designations may provide regulatory benefits additional to the listing of a species that focus on recovery of the species.

Two limitations to the regulatory effect of critical habitat exist. First, a section 7(a)(2) consultation is required only where an action is authorized, funded, or carried out by any Federal agency; if there is no Federal action, the designation of private lands as critical habitat does not restrict any actions that destroy or adversely modify critical habitat. Second, the designation only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure that the conservation role and function of those areas that contain the physical and biological features essential to the conservation of the species or of unoccupied areas that are essential for the conservation of the species are not appreciably reduced. Critical habitat designation alone, however, does not require property owners to undertake affirmative actions to promote the recovery of the species.

Once an agency determines that consultation under section 7(a)(2) of the Act is necessary, the process may conclude informally if a proposed Federal action is not likely to adversely

affect critical habitat. However, if it is determined through informal consultation that adverse impacts are likely to occur, the Federal agency initiates formal consultation. Formal consultation concludes when we issue a biological opinion on whether the proposed Federal action is likely to result in destruction or adverse modification of critical habitat, or result in jeopardy to the species.

A biological opinion that concludes no destruction or adverse modification of critical habitat will occur as a result of the action may contain discretionary conservation recommendations to minimize adverse effects to the physical and biological features essential to the conservation of the species. We only suggest reasonable and prudent alternatives to the proposed Federal action only when our biological opinion results in an adverse modification determination.

As stated above, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species and/or adverse modification of its critical habitat, but not necessarily to manage critical habitat or institute recovery actions on critical habitat. Conversely, voluntary conservation efforts implemented through management plans institute proactive actions over the lands they encompass and are often put in place to remove or reduce known threats to a species or its habitat; therefore implementing recovery actions.

We believe that, in many instances, the benefit of critical habitat designation is low compared to the conservation benefit that can be achieved through conservation efforts or management plans, especially when the likelihood of a Federal action occurring is low. The conservation achieved through implementing Habitat Conservation Plans (HCPs), Safe Harbor Agreements, or experimental populations established under section 10 of the Act or other habitat management plans or agreements is typically greater than what we achieve through multiple project-by-project, section 7(a)(2) consultations involving consideration of critical habitat. Management plans may commit resources to implement long-term management and protection to particular habitat for at least one and possibly additional listed or sensitive species. Section 7(a)(1) commits Federal agencies to utilizing their authorities in furtherance of the purposes of the Act,

and in carrying out conservation of listed species. Beyond that, Section 7(a)(2) consultations commit Federal agencies to preventing adverse modification of critical habitat caused by a particular project, and not to providing conservation or long-term benefits to areas not affected by the proposed project. Implementation of an HCP, management plan, or agreement that considers enhancement or recovery as the management standard may often provide as much or more benefit than a consultation for critical habitat designation.

Critical habitat designation may provide educational benefits. Designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the affected species. In general, critical habitat designation always has educational benefits; however, in some cases it may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefits of a critical habitat designation. Including lands in critical habitat also would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

#### **Benefits of Excluding Non-Federal Lands With Conservation Partnerships**

Most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002, p. 720). Stein *et al.* (1995, p. 400) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998; Crouse *et al.* 2002; James 2002). Building partnerships and promoting

voluntary cooperation of landowners are essential to our understanding the status of species on non-Federal lands, and necessary for us to implement recovery actions such as reintroducing listed species and restoring and protecting habitat.

Many non-Federal landowners derive satisfaction from contributing to endangered species recovery. We promote these private-sector efforts through the Department of the Interior's Cooperative Conservation philosophy. Conservation agreements with non-Federal landowners (e.g., HCPs, safe harbor agreements) enhance species conservation by extending species protections beyond those available through section 7(a)(2) consultations. In the past decade, we have encouraged non-Federal landowners to enter into conservation agreements, based on the view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through regulatory methods (61 FR 63854, December 2, 1996).

Many private landowners, however, are wary of the possible consequences of attracting endangered species to their property. Mounting evidence suggests that some regulatory actions by the Federal Government, while well-intentioned and required by law, can (under certain circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996; Bean 2002; Conner and Mathews 2002; James 2002; Koch 2002; Brook *et al.* 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability. This perception results in anti-conservation incentives, because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003).

According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). The magnitude of this outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002). We believe that the judicious exclusion of specific areas of non-federally owned lands from critical habitat designations can

contribute to species recovery and provide a superior level of conservation.

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7(a)(2) of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. Thus, the benefits of excluding areas that are covered by effective partnerships or other conservation commitments can often be high.

#### **Benefits of Excluding Lands With HCPs or Other Management Plans From Critical Habitat**

The benefit of excluding lands with approved HCPs from critical habitat designation includes relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by critical habitat. Many HCPs take years to develop, and upon completion, are consistent with recovery objectives for listed species that are covered within the plan area. Many conservation plans also provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine conservation efforts and partnerships designed to proactively protect species to ensure that listing under the Act will not be necessary. Our experience in implementing the Act has found that designation of critical habitat within the boundaries of management plans that provide conservation measures for a species is a disincentive to many entities which are either currently developing such plans, or contemplating doing so in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species will be affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning. In fact, designating critical habitat in areas covered by a pending HCP or conservation plan could result in the loss of some species' benefits if participants abandon the planning process, in part because of the strength of the perceived additional regulatory compliance that such designation would entail. The time and cost of regulatory compliance for a critical habitat designation do not have to be quantified for them to be perceived as an additional Federal regulatory burden

sufficient to discourage continued participation in developing plans targeting listed species' conservation.

A related benefit of excluding lands covered by approved HCPs from critical habitat designation is the unhindered, continued ability it gives us to seek new partnerships with future plan participants, including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. We have found that potential participants are not inclined to participate in such management plans when we designate critical habitat within the area that would be covered by such a management plan, thus having a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. By excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

We also note that permit issuance in association with HCP applications require consultation under section 7(a)(2) of the Act, which would include the review the effects of all HCP-covered activities that might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (see definition of "harm" at 50 CFR 17.3), even without the critical habitat designation. In addition, all other Federal actions that may affect the listed species would still require consultation under section 7(a)(2) of the Act, and we would review these actions for possibly significant habitat modification in accordance with the definition of "harm" referenced above.

#### **Tribal Lands Excluded From Lynx Critical Habitat**

Tribal lands included in the proposed designation were those of the Houlton Band of Maliseet Indians, Aroostook Band of Micmac Indians, Passamaquoddy Tribe, and Penobscot Indian Nation in Maine (Unit 1), Grand Portage Indian Reservation and Vermillion Lake Indian Reservation in Minnesota (Unit 2), and the Flathead Indian Reservation in Montana (Unit 3). In the proposed rule, we requested comments on whether Tribal lands in the Northern Rockies, Maine, and Minnesota need to be included pursuant to Executive Order 3206. The amount of Tribal lands proposed was relatively small in size (totaling approximately 224 km<sup>2</sup> (86.3 mi<sup>2</sup>) in Maine, 203 km<sup>2</sup> (78.2 mi<sup>2</sup>) in Minnesota, and 957 km<sup>2</sup> (369.4 mi<sup>2</sup>) in Montana). We contacted

and met with a number of Tribes to discuss the proposed designation, and we also received comments from numerous Tribes requesting that their lands not be designated as critical habitat because of their sovereign rights, in addition to concerns about economic impacts and the effect on their ability to manage natural resources.

#### **Benefits of Inclusion**

The primary benefit of including Tribal lands in the lynx critical habitat designation would be education that could be exchanged on land management methods that would benefit the species.

Potentially, some activities could be authorized, funded, or carried out by a Federal agency, which would require consultation and perhaps action modification to ensure that the physical and biological features essential to lynx are not destroyed or adversely modified.

#### **Benefits of Exclusion**

Tribal lands are small in size relative to the large landscape required to sustain the lynx population in these areas. The larger landscape in Maine is comprised of lands managed for commercial forestry, and in Minnesota and Montana the larger landscape is managed by the USFS, which revised its forest plans to address the needs for lynx. Therefore, although these Tribal lands support lynx habitat and the PCE, they have a minor role in lynx conservation compared to the commercial forestlands in Maine and National Forest lands in Minnesota and Montana. Due to the management plans and practices that are designed to avoid adverse effects to lynx and lynx habitat, and that are already in place on Tribal lands, it is highly unlikely that activities approaching the threshold of adverse modification of critical habitat would occur.

Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997) states that, "Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species". The President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments;" and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2) also emphasize that Tribal lands should be evaluated to determine whether their inclusion in a critical habitat designation is essential to the

species. Therefore, we believe that fish, wildlife, and other natural resources on Tribal lands are better managed under Tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Such designation is often viewed by Tribes as an unwanted intrusion into Tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

Exclusion of Tribal lands may be warranted because Tribes are already committed to conserving lynx. Through Federal grant programs, the Passamaquoddy Tribe is conducting surveys and habitat models for lynx and snowshoe hare, the Houlton Band of Maliseet Indians is conducting lynx surveys, the Grand Portage Tribe is assessing lynx habitat on reservation lands, and lynx habitat is protected through a comprehensive conservation plan on the Flathead Reservation in Montana. Information from these efforts will be used to inform management plans or strategies to promote the conservation of lynx on Tribal lands. Additionally, we received general comments from Tribes voicing their commitment to ensuring that lynx remain a viable part of the ecosystem.

#### **Benefits of Exclusion Outweigh Benefits of Inclusion**

We believe that conservation of lynx can be achieved on Tribal lands within the critical habitat units through the cooperation of Tribes, and without designating them as critical habitat. The large area of the lynx critical habitat designation is sufficient to conserve the species without the addition of Tribal lands. Therefore, Tribal lands are not essential to the conservation of the species, and Tribal lands in Units 1, 2, and 3 have not been designated as critical habitat pursuant to section 4(b)(2) of the Act.

In addition to the fact that Tribal lands are not essential to lynx, the management plans and activities being implemented on Tribal lands are likely to ensure continued conservation of lynx. Given the importance of our government-to-government relationship with Tribes, the benefit of maintaining our commitment to the Executive Order by excluding these lands outweighs the benefit of including them in critical habitat.

Exclusion of Tribal lands from the final designation of critical habitat for the lynx will not result in the extinction of the species because the Houlton Band

of Maliseet Indians, Aroostook Band of Micmac Indians, Passamaquoddy Tribe, Penobscot Indian Nation, Grand Portage Indians, Vermillion Lake Indians, and Flathead Indian Reservation Tribes implement programs for the conservation of the species, and physical and biological features essential to it, on occupied areas. Moreover, the jeopardy standard of section 7(a)(2) of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct. The protections afforded to the lynx under the jeopardy standard will remain in place for the areas proposed for exclusion from revised critical habitat.

#### *Exclusions Under Section 4(b)(2) of the Act*

The Secretary can consider the existence of conservation agreements and other land management plans with private, State, and Tribal entities when making decisions under section 4(b)(2) of the Act. The Secretary may also consider voluntary partnerships and conservation plans, and weigh the implementation and effectiveness of these against that of designation. Consideration of relevant impacts of designation or exclusion under section 4(b)(2) may include, but is not limited to, any of the following factors: (1) Whether the plan provides specific information on how it protects the species and the physical and biological features, and whether the plan is at a geographic scope commensurate with the species; (2) whether the plan is complete and will be effective at conserving and protecting of the physical and biological features; (3) whether a reasonable expectation exists that conservation management strategies and actions will be implemented, that those responsible for implementing the plan are capable of achieving the objectives, that an implementation schedule exists, and that adequate funding exists; (4) whether the plan provides assurances that the conservation strategies and measures will be effective (i.e., identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan); (5) whether the plan has a monitoring program or adaptive management to ensure that the conservation measures are effective; (6) the degree to which the record supports a conclusion that a critical habitat designation would impair the benefits of the plan; (7) the extent of public participation; (8) NEPA compliance; (9) demonstrated track record of implementation success; (10)

level of public benefits derived from encouraging collaborative efforts and encouraging private and local conservation efforts; and (11) the effect designation would have on partnerships. Our analysis of exclusions that landowners requested is included below.

#### *Unit 1 (Maine)*

#### **Maine Healthy Forest Reserve Program**

In 2003, Congress passed the Healthy Forest Restoration Act. Title V of this Act designates a Healthy Forest Reserve Program (HFRP) with objectives to: (1) Promote the recovery of threatened and endangered species, (2) improve biodiversity, and (3) enhance carbon sequestration. In 2006, Congress provided the first funding for the HFRP, and Maine, Arkansas, and Mississippi were chosen as pilot states to receive funding through their respective Natural Resources Conservation Service (NRCS) State offices. NRCS and the Service determined that the most efficient way to complete Section 7 consultations and to deliver regulatory assurances required by the HFRP was by developing programmatic biological opinions for each of the participating States. A programmatic biological opinion provides a framework for determining effects of the action and quantifying incidental take, and describes baseline conditions, the net conservation benefit, and terms and conditions when reviewing projects selected for future funding. Based on a successful pilot program, in 2008, the HFRP was reauthorized as part of the Farm Bill.

In 2006 and 2007, NRCS offered the HFRP to landowners in the proposed Canada lynx critical habitat unit in Maine to promote development of Canada lynx forest management plans. The value of such planning to lynx recovery is identified in the Service's Canada Lynx Recovery Outline (USFWS 2005):

- *Objective 1:* Retain adequate habitat of sufficient quality to support the long-term persistence of lynx populations within each of the identified core areas and Recovery Action; and
- *Recovery Action 1.* Establish management commitments in core areas that will provide for adequate quality and quantity of habitat such that there is a reasonable expectation that persistent lynx populations can be supported in each of the core areas for at least the next 100 years. On non-Federal lands in the core areas, develop and implement best management practices and long-term management

agreements for lynx with key State, private, or Tribal forest managers.

Five landowners are enrolled in the HFRP—the Passamaquoddy Tribe (27,414 ac; 11,094 ha), The Nature Conservancy (182,086 ac; 73,688 ha), the Forest Society of Maine as conservation easement holder for the Merriweather LLC-West Branch Project (284,276 ac; 115,042 ha), Katahdin Forest Products (136,550 ac; 55,260 ha), and Elliotsville Plantation Inc. (54,327 ac; 21,985 ha). Collectively, the landowners have signed contracts (with NRCS) committing to developing lynx forest management plans on 684,653 ac (277,069 ha), which is 10 percent of the 6.8 million ac (2.7 million ha) of the proposed critical habitat in Maine. Lynx maintain large home ranges; therefore, forest management plans at large landscape scales will provide substantive recovery benefits to lynx.

NRCS requires that lynx forest management plans must be based on the Service's "Canada Lynx Habitat Management Guidelines for Maine" (McCollough 2007, entire). These guidelines were developed from the best available science on lynx management for Maine and have been revised as new research results became available. The guidelines require maintenance of prescribed hare densities that have resulted in reproducing lynx populations in Maine. The guidelines are:

1. Avoid upgrading or paving dirt or gravel roads traversing lynx habitat. Avoid construction of new high speed/high traffic volume roads in lynx habitat. Desired outcome: Avoid fragmenting potential lynx habitat with high traffic/high-speed roads.
2. Maintain through time at least one lynx habitat unit of 35,000 ac (14,164 ha) (~1.5 townships) or more for every 200,000 ac (80,937 ha) (~9 townships) of ownership. At any time, about 20 percent of the area in a lynx habitat unit should be in the optimal mid-regeneration conditions (see Guideline 3). Desired outcome: Create a landscape that will maintain a continuous presence of a mosaic of successional stages, especially mid-regeneration patches that will support resident lynx.
3. Employ silvicultural methods that will create regenerating conifer-dominated stands 12–35 ft (3.7–10.7 m) in height with high stem density (7,000–15,000 stems/ac; 2,800–6,000 stems/ha) and horizontal cover above the average snow depth that will support greater than 2.7 hares/ac (1.1 hares/ha). Desired outcome: Employ silvicultural techniques that create, maintain, or prolong use of stands by high populations of snowshoe hares.

4. Maintain land in forest management. Development and associated activities should be consolidated to minimize direct and indirect impacts. Avoid development projects that occur across large areas, increase lynx mortality, fragment habitat, or result in barriers that affect lynx movements and dispersal. Desired outcome: Maintain the current amount and distribution of commercial forest land in northern Maine. Prevent forest fragmentation and barriers to movements. Avoid development that introduces new sources of lynx mortality.

5. Encourage coarse woody debris for den sites by maintaining standing dead trees after harvest and leaving patches (at least .75 ac; .30 ha) of windthrow or insect damage. Desired outcome: Retain coarse woody debris for denning sites.

Notably, HFRP forest management plans must provide a net conservation benefit for lynx, which will be achieved by employing the lynx guidelines, identifying baseline habitat conditions, and meeting NRCS standards for forest plans. Plans must meet NRCS HFRP criteria and guidelines and comply with numerous environmental standards. NEPA compliance will be completed for each plan. NRCS held public informational sessions about the HFRP and advertised the availability of funds. Plans must be reviewed and approved by NRCS with assistance from the Service. The details of the plans are proprietary and will not be made public per NRCS policy.

Plans must be developed for a forest rotation (70 years) and include a decade-by-decade assessment of the location and anticipated condition of lynx habitat on the ownership. Some landowners are developing plans exclusively for lynx, and others are combining lynx management (umbrella species for young forest) with pine marten (umbrella species for mature forest) and other biodiversity objectives. There will be broad public benefits derived from these plans, including benefits to many species of wildlife that share habitat with the lynx. Most landowners are writing their own plans. The Nature Conservancy, however, contracted with the University of Maine, Department of Wildlife Ecology to develop a lynx-pine marten plan that will serve as a model for lynx/biodiversity forest planning, and be shared with other northern Maine landowners.

Landowners who are enrolled with NRCS commit to a 10-year contract. Landowners must complete their lynx forest management plans within 2 years of enrollment. The first plans will be

completed in fall 2009. The majority (50 to 60 percent) of HFRP funds are withheld until plans are completed. By year 7, landowners must demonstrate on-the-ground implementation of their plan. NRCS will monitor and enforce compliance with the 10-year contracts. At the conclusion of the 10-year cost share contract, we anticipate that Safe Harbor Agreements or other agreements to provide regulatory assurances will be developed by all landowners as an incentive to continue implementing the plans.

We completed a programmatic biological opinion for the HFRP in 2006, that assesses the overall effects of the program on lynx habitat and on individual lynx, and provides the required incidental take coverage. Separate biological opinions will be developed under this programmatic opinion for each of the five enrollees. These tiered opinions will document environmental baseline, net conservation benefits, and incidental take for each landowner. If additional HFRP funding is made available to Maine in the future, new enrollees will be tiered under this programmatic opinion. This programmatic opinion will be revised as new information is obtained, or if new rare, threatened, or endangered species are considered for HFRP funding.

Commitments to the HFRP are strengthened by several other conservation efforts. The Nature Conservancy (TNC) land enrolled in the HFRP is also enrolled in the Forest Stewardship Council (FSC) forest certification program, which requires safeguards for threatened and endangered species. The Forest Society of Maine is under contract to manage a conservation easement held by the State of Maine on the Katahdin Forest Management lands, which is also enrolled in the HFRP. This easement requires that threatened and endangered species be protected and managed. The Forest Society of Maine also holds a conservation easement on the Merriweather LLC—West Branch property, which contains requirements that threatened and endangered species be protected and managed. These lands are also certified under the Sustainable Forestry Initiative (SFI) and FSC, which require that there be programs for threatened and endangered species. The Eliotsville Plantation, Inc. lands enrolled in the HFRP are held in a trust, which specifies the lands preserve wildlife species. The Passamaquoddy enrolled lands are managed as trust lands by the Bureau of Indian Affairs, and projects occurring on those lands

are subject to NEPA review and section 7 consultation.

### Benefits of Inclusion

The primary benefit of including an area within a critical habitat designation is the protection provided by section 7(a)(2) of the Act, which directs Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a threatened or endangered species and do not result in the destruction or adverse modification of critical habitat. Consultation has already occurred on these lands, and it included consideration of lynx habitat. The regulatory benefit of designating critical habitat on the HFRP lands would be minimal because there are few Federal actions to trigger the consultation provisions under section 7(a)(2) of the Act. Forestry activities are exempt from the Clean Water Act, and few landowners in Maine obtain Federal funding for projects on their lands. Since the lynx was listed in 2000, there have been two formal consultations on lynx in Maine (the HFRP biological opinion and a highway project) and about 73 informal consultations; however, there have been no consultations on Federal actions on The Nature Conservancy, West Branch Project, Eliotsville Plantation, Inc., and Katahdin Forest Management lands. The Passamaquoddy Tribe, through the Bureau of Indian Affairs, has informally consulted with the Service on four timber sales during this time period, resulting in determinations that the projects were not likely to adversely affect lynx because the harvests would create early successional habitat beneficial to lynx. Consultations in northern Maine have been mostly on small Federal actions (less than 15 ac; 6 ha) that have few consequences to lynx, which require large landscapes of 35,000 ac (14,164 ha) or more; therefore, the results of these informal consultations were that the projects would have no effect on lynx or would not likely adversely affect lynx.

A potential benefit of critical habitat designation would be to signal the importance of these lands to Federal agencies, scientific organizations, State and local governments, and the public to encourage conservation efforts to benefit the lynx and its habitat. By publication of the proposed rule, we are educating the public of the location of core lynx habitat and areas most important for the recovery of this species. In addition, designation of critical habitat on HFRP enrollee lands could provide some educational benefit through the rulemaking process.

### Benefits of Exclusion

A Federal nexus on HFRP lands is rare, and development is unlikely because conservation easements exist on many of these lands. Section 7(a)(2) review will not provide benefits to the physical and biological features essential to the conservation of lynx, because most Federal projects in northern Maine are small and will not benefit habitat at a geographic scale meaningful for lynx conservation. Therefore, the regulatory protection provided through the section 7(a)(2) process for critical habitat would be minimal. The HFRP goes beyond the standard of adverse modification to provide a net conservation benefit. The conservation measures for the lynx included in the HFRP plans are affirmative obligations that address the physical and biological features, represent the best available science, and provide a net conservation benefit to the species by ensuring the quality and quantity of unfragmented lynx habitat on the landscape.

Excluding these 684,653 acres of HFRP lands from critical habitat designation would help strengthen partnerships and promote other aspects of recovery for the lynx. Since the lynx was listed in 2000, it has been difficult for us to effectively address lynx conservation across the forest landscape in northern Maine because of the numerous private industrial forest landowners with whom coordination is required. HFRP contracts will contribute to the conservation of the physical and biological features essential to the conservation of the lynx in approximately 10 percent of the proposed critical habitat unit. Proactively developing conservation programs for lynx across large ownerships can be a more effective recovery strategy than project-by-project planning in a landscape where a section 7 is rarely applicable. Lynx require large home ranges, and lynx and snowshoe hare habitat occurs in a habitat mosaic across the landscape that changes with time and space as the forests age or disturbances occur (e.g., insect outbreaks or timber management). The HFRP plans address landscape-level planning and actions for forestry-related activities within the context of lynx-specific guidelines, which can facilitate lynx recovery. The HFRP contracts operate under a programmatic biological opinion under section 7(a)(2), enabling a coordinated, multi-landowner approach to lynx conservation on private lands.

HFRP contracts build on the ongoing partnership between the Service, Maine

Department of Inland Fisheries and Wildlife, and the HFRP enrollees. The contracts provide assurances to the Service that individual landowners will address the habitat requirements of lynx and facilitate the consideration and implementation of lynx conservation needs at a broad landscape scale. Although the HFRP contracts are for 10 years, lynx plans are required to address forest management for the next 70 years. Several incentives encourage enrollees to continue their plans after the conclusion of the 10-year contract:

- Enrollees will be offered Safe Harbor Agreements or other mechanisms to extend incidental take coverage and regulatory assurances beyond the 10 year period. Most of the enrollees are in forest certification programs and have conservation easements.
- HFRP plans meet the requirements of certification programs and easement requirements to document how they will manage for federally listed species.
- Future HFRP funding may be available to promote continued management on these lands.
- Landowners may be reimbursed at a graduated rate of up to 100 percent for land put under conservation easements of 30-year and 99-year duration.

Most HFRP enrollees have a long track record of conservation in Maine. The Nature Conservancy has been working with us and other conservation partners since the 1970s. The Forest Society of Maine is a conservation easement holder in northern Maine, and has been working with us since the late 1990s. We have a long partnership with the Passamaquoddy Tribe that includes consulting on Tribal silvicultural projects, cooperative research, review of forest management plans, and implementation of Service conservation recommendations. Many of the HFRP enrollees contribute as members to the University of Maine Cooperative Forest Research Unit (CFRU). The CFRU has funded numerous lynx and snowshoe hare studies that have advanced our understanding of lynx population dynamics and habitat relationships. Landowners have facilitated research and surveys by allowing access to their lands and logistical support. The positive experiences from HFRP enrollment will promote continued support for funding and continued lynx research.

Some of the enrolled lands could be sold, and it may be argued that new owners may not participate in long-term lynx management. However, new landowners could benefit from the incidental take coverage offered by HFRP or future Safe Harbor Agreements

as a result of HFRP plans. Lands under conservation easements would require planning for federally listed species, and new landowners would have an incentive to continue to implement plans to meet their easement requirements. Many of the owners have SFI or FSC certifications, which have similar requirements for State and federally listed species planning. Therefore, substantial incentives exist for a new landowner to honor existing lynx management plans.

Some landowners do not trust that the regulatory effect of critical habitat designation is limited, and they do not want an additional layer of Federal regulation on their private property. They are concerned that additional State regulations or local restrictions may be imposed as a result of the designation of critical habitat. HFRP enrollees are some of the largest landowners in Maine. We need the cooperation and partnership of these landowners to achieve recovery of lynx in Maine. If designation causes their alienation, it would be counterproductive to designate on their lands.

### Benefits of Exclusion Outweigh Benefits of Inclusion

We believe there would be minimal benefit in designating lands enrolled in the HFRP as critical habitat for the lynx within Unit 1. We evaluated the proposed exclusion of approximately 684,653 ac (277,069 ha) of lands enrolled in the HFRP. Inclusion of these lands would result in few benefits; minimal consultation under section 7, and minimal education related to lynx conservation would be realized.

The HFRP lynx management plans will be effective and directly address the physical and biological features essential to lynx by incorporating the Service's lynx conservation guidelines. These conservation actions and management for the lynx and the physical and biological features essential to it within large landscapes exceed any conservation value provided as a result of regulatory protections that have been or may be afforded through critical habitat designation. The exclusion of these lands from critical habitat will help preserve partnerships developed with the landowners. Most of the HFRP enrollees have a demonstrated track record of working with the Service and helping to fund lynx research. The HFRP plans will have a high probability of implementation due to the 10-year contract with NRCS and significant incentives (e.g., Safe Harbor, requirements of forest certification and conservation easements, continued funding and possibly additional funds),

and could continue for a 70-year period. Funding is assured because development of lynx forest management plans and initial implementation is being paid for by NRCS. HFRP plans provide a high degree of public benefit for lynx and other wildlife that share their habitat.

The benefits of excluding HFRP lands from critical habitat outweigh the benefits of retaining these lands as critical habitat. Educational benefits can be realized by designation of critical habitat designation, which informs the public via the rulemaking process. However, education has already been realized through the HFRP. The best scientific information regarding the long-term conservation of lynx is being used and shared with landowners to assist in the development of their plans. We participate in the delivery of this information. We will continue to review Federal actions under Section 7(a)(2) of the Act, although the only likely Federal action we foresee on the lands enrolled in HFRP will be on the consultation required for development of the individual plans. A programmatic biological opinion has already been prepared and it addresses lynx habitat in detail.

The HFRP provides an opportunity for us to work in partnership with five landowners across several landscape scales and ownerships. The HFRP demonstrates that our lynx management guidelines are a flexible, outcome-based approach to addressing lynx recovery in northern Maine that can be adapted to a variety of landowner types and landscapes. The HFRP lynx forest management plans will employ state-of-the-art habitat mapping, apply the best available science, and have a high likelihood of being carried out. We believe that the benefits of excluding HFRP enrollee lands outweigh the benefits of inclusion, particularly because these landowners have committed to developing long-term lynx habitat plans and on-the-ground management affecting large landscapes.

#### **Exclusion Will Not Result in Extinction of the Species**

Exclusion of 684,653 ac (277,069 ha) from Unit 1 of this revised critical habitat designation will not result in the extinction of the species, because the HFRP plans provide for the conservation of the species and the physical and biological features essential to it. The jeopardy standard of section 7(a)(2) of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct. The protections

afforded the lynx under the jeopardy standard will remain in place for the areas excluded from revised critical habitat.

#### **Maine Forest Products Council Conservation Partnership Agreement**

The Maine Forest Products Council (MFPC) is a trade organization representing the Maine forest products community, whose 350-member companies include landowners, loggers, truckers, paper mills, and lumber processors. The MFPC advises its members on Federal and State regulatory issues. The 28 MFPC private commercial forest landowners in the area of critical habitat own 74 percent of the lands proposed for lynx critical designation in Maine. Other participants in the partnership include Maine Department of Inland Fisheries and Wildlife (MDIFW) and the Service. Beginning with our first proposal to designate critical habitat for lynx in 2006, MFPC submitted draft conservation agreements with the intent to document its members' ongoing partnership with wildlife agencies responsible for lynx management and conservation.

We assessed the benefits of inclusion and the benefits of exclusion of MFPC members' lands, based on the most recently submitted draft conservation agreement, and determined that these lands do not meet our criteria for exclusion from critical habitat. Our analysis follows below.

The MFPC and its landowner members have supported lynx recovery by allowing researchers from MDIFW, the Service, and the University of Maine (UMaine) access to their private property to conduct lynx surveys and research, and by providing logistical assistance (e.g., lodging, field maps) to the lynx researchers. Thirteen of the 28 landowners are contributing members to UMaine's Cooperative Forestry Research Unit (CFRU). Since 2000, the CFRU members have contributed more than \$515,000 to support 9 research projects assessing the effects of forest management on snowshoe hares and Canada lynx. We have supported many of these projects, which form a large part of the scientific basis for lynx recovery in Maine. This partnership reinforces MFPC member funding and support for continued lynx research through CFRU.

Under a draft partnership agreement, the MFPC would encourage funding for the UMaine CFRU to complete landscape-level lynx habitat mapping across MFPC member lands using satellite imagery and state-of-the-art lynx and hare habitat models developed

by UMaine. MFPC would also encourage funding for updates to the habitat maps, and members would assist with verification of the mapping product. At this time, high-quality maps of lynx habitat across mixed ownerships do not exist. Mapping of this quality would enable landscape-level habitat analyses and planning for lynx, snowshoe hare and many other species. Mapping would document the shifting mosaic of habitat, guide opportunities for management, and project future habitat conditions under different silvicultural scenarios.

The Draft MFPC Agreement would enable the MFPC, MDIFW and the Service to collaboratively develop multi-species landscape-scale planning guidelines that would assist in the development of management recommendations for lynx in relation to other wildlife species. MFPC participation is important to ensure that guidelines are acceptable to forest industries. These guidelines would be a useful resource for the land managers to inform their management decisions for the conservation of lynx and other wildlife.

The Draft MFPC Agreement would provide educational benefits by establishing mechanisms to broaden the understanding of lynx habitat management and disseminating the best available scientific information on lynx throughout all levels of the forest products industry. Existing training programs for foresters, loggers, and land managers would be expanded to include lynx education components. Web sites, newsletters, professional meetings and forums would provide information on lynx research and management. The Draft MFPC Agreement would document a management process to review research results and facilitate dissemination of results to Maine's forest managers. The Draft MFPC Agreement would create an annual lynx conservation workshop and experimental testing of silvicultural techniques. An annual report would be provided to all partners summarizing lynx conservation activities and achievements. This form of education and training is anticipated to result in a substantial improvement in the understanding of lynx habitat requirements among members of the forest products industry. Education is generally considered a benefit of designating critical habitat in that it educates the public and others about the potential conservation value of an area.

The Draft MFPC Agreement could help achieve lynx recovery, as identified in the Service's Canada Lynx Recovery Outline (USFWS 2005); however,

actions not made mandatory in the Draft Agreement would have to be completed to realize some of the conservation benefits identified in the Recovery Outline, which include:

- Objective 1: Retain adequate habitat of sufficient quality to support the long-term persistence of lynx populations within each of the identified core areas and Recovery Action, and
- Recovery Action 1. Establish management commitments in core areas that will provide for adequate quality and quantity of habitat such that there is a reasonable expectation that persistent lynx populations can be supported in each of the core areas for at least the next 100 years. On non-Federal lands in the core areas, develop and implement best management practices and long-term management agreements for lynx with key State, private, or Tribal forest managers.
- Recovery Action 2. Maintain baseline inventories of lynx habitat in each core area, monitoring changes in structure and the distribution of habitat components.
- Recovery Action 4. Identify habitat facilitating movement between each core area and lynx populations in Canada.
- Recovery Action 6. Identify population and habitat limiting factors for lynx in the contiguous United States. Continue and complete studies necessary to gather basic information on the ecological requirements, distribution, population size, and trends in each of the core areas and as possible for secondary areas. Identify the risk to lynx populations posed by forest management techniques and human induced mortality from factors such as roads, trapping, and hunting. Address these factors as necessary to ensure the long-term persistence of lynx populations in core areas.

Under the Draft MFPC Agreement, the parties would work collaboratively to improve lynx habitat management on industrial forest lands based on scientific research. Such measures might include development of landscape-scale habitat maps; experiments to evaluate the feasibility, practicality, and effectiveness of research recommendations; and development of multi-species landscape-scale planning guidelines. The Draft Agreement does not prescribe measures, however, for directly managing or protecting the physical and biological features essential to the conservation of lynx. The MFPC would work to support the implementation of management measures based on research if recommendations are

operationally feasible, economically viable, and biologically meaningful.

#### Benefits of Inclusion

The primary benefit of including the area addressed by the Draft MFPC Agreement within a critical habitat designation is the protection provided by section 7(a)(2) of the Act, which directs Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a threatened or endangered species, and do not result in the destruction or adverse modification of critical habitat. The regulatory benefit of designating critical habitat in Maine is currently low, because few Federal actions trigger the consultation provisions under section 7(a)(2) of the Act. Forestry activities are exempt from the Clean Water Act, and few industrial forest landowners engage in activities that involve Federal funding or authorization. Since the lynx was listed in 2000, there have been two formal consultations on lynx in Maine (the HFRP biological opinion and a highway project) and about 73 informal consultations. Consultations in northern Maine have been mostly on small Federal actions (less than 15 ac; 6 ha) that have few consequences to lynx, which require large landscapes of 35,000 ac (14,164 ha) or more; therefore, the results of these informal consultations were that the project would have no effect on lynx or would not likely adversely affect lynx.

At this time, we are aware of two proposals that may affect large landscapes on MFPC member lands and will trigger consultation under section 7(a)(2). In 2008, we initiated consultation with the Army Corps of Engineers on a large wind power project. In 2007, we provided comments as requested by the Maine Land Use Regulation Commission on a large-scale development project that would occur on a MFPC member's land in Unit 1—Plum Creek's Moosehead Concept Plan. This project included a request for a zoning change to allow development of approximately 1,000 house lots, 2 large resorts, and possibly wind power projects on up to 2,023 ha (5,000 ac) in critical habitat Unit 1. As mitigation, Plum Creek is offering a combination of fee title sale and a conservation easement on 174,015 ha (430,000 ac) of undeveloped lands. The easement would require that threatened and endangered species conservation be addressed as part of Plum Creek's Sustainable Forestry Initiative certification program. Aspects of wildlife and special areas management would be overseen by a Management

Advisory Team, which would include representation from the Service. If the concept plan is approved by the State, projects requiring Federal permitting would likely be initiated within several years. We would review the Plum Creek projects under the concept plan through Section 7 consultation with Army Corps of Engineers or other Federal permits or funding.

Federal actions have occurred on MFPC lands, and because of this, it is possible that section 7 consultations will occur in the future. Although a Federal nexus on projects in this area is rare, designation of critical habitat could provide a conservation benefit for lynx habitat.

A potential benefit of critical habitat designation would be to signal the importance of designated lands to Federal agencies, scientific organizations, State and local governments, and the public to encourage conservation efforts to benefit the lynx and its habitat. Critical habitat designation educates the public about the location of core lynx habitat and areas most important for the recovery of this species.

The Draft MFPC Agreement could encourage members to support a 5-year position at UMaine and CFRU (about \$50,000 annually). The person in this position would help complete habitat mapping, which would require \$300,000 to \$500,000 of additional funds. This person would also coordinate the outreach and research specified in the Draft Agreement. However, this funding is not assured. CFRU dues paid by member landowners are needed to support the research commitments of the Draft MFPC Agreement, and not all MFPC members within critical habitat Unit 1 are contributing members of the CFRU. Plum Creek is the only MFPC member to potentially pledge funds (\$6,000 annually for the next 5 years). None of the other MFPC member companies have made funding commitments. No certainty exists for implementation of important aspects of the Draft MFPC Agreement.

The Draft Agreement does not require specific land management actions to be taken by landowners. The MFPC landowners each manage their properties differently, and own different amounts of property in different stand conditions. The MFPC is an umbrella organization with no authority over its members, and can only encourage its members to voluntarily act to meet the guidelines in the Draft Agreement. Individual landowners would not be actual parties to the agreement. No commitment would be made through

the agreement to allow the Service access to member lands in order to monitor lynx or effects of management on lynx, and existing easements that MFPC relies on were not provided for review during this analysis. All of these factors indicate that benefits to lynx by excluding these lands are very speculative.

We compared the HFRP, which we found met our criteria for exclusion under section 4(b)(2), with the MFPC Draft Agreement, which we found did not meet our criteria for exclusion. For instance, both conservation vehicles adopt a 10-year timeframe for required contracts; however contracts under the HFRP are binding and ramifications for breach exist, and the MFPC Agreement is voluntary with no consequences for termination, which could happen at any time. Additionally, the HFRP contemplates conversion of the 10-year contract to an easement, as discussed earlier. Participants in HFRP, like many MFPC members, are enrolled in forest certification programs. We find that participation in the certification programs demonstrates some commitment to responsible resource management; however, we were not provided with endangered species or lynx management plans, which are required under forest certification programs, to review. We could not evaluate the efficacy of the programs or potential benefits to the lynx or its habitat. The HFRP commitment is that contractually-bound parties will likely meet their obligations to provide lynx management plans. Because neither the MFPC, nor its Draft Agreement commit or bind its members in any manner, participation in a certification program, though laudable, is less relevant for our evaluation.

#### Benefits of Exclusion

The Draft MFPC Agreement would commit partners to monitoring lynx habitat, contributing to lynx research, developing lynx management guidelines, promoting education, and conducting outreach across the lands of 28 corporate forest landowners. These commitments would strengthen partnerships and promote other aspects of recovery for the lynx. The Draft Agreement would have a duration of 10 years (extendable in 5-year increments); however, it would allow for unilateral termination. MFPC would prepare an annual report summarizing the actions taken to implement the agreement.

Since the lynx was listed in 2000, it has been difficult for us to effectively address lynx conservation across the forest landscape in northern Maine because of the numerous private

industrial forest landowners with whom coordination is required. It is important to proactively develop conservation programs for lynx across large landscapes. Lynx require large home ranges, and lynx and snowshoe hare habitat occurs in a habitat mosaic across the landscape that changes over time and space as the forests ages or disturbances occur to forest stands (e.g., insect outbreaks or timber management). Conservation easements (that restrict development) exist on approximately 809,374 ha (2,000,000 ac) in the area covered by the Draft MFPC Agreement. Some of the landowners have requirements to manage for federally listed species under forest certification programs.

The Draft MFPC Agreement covers 2,036,378 ha (5,032,000 ac), 74 percent of critical habitat Unit 1—an area larger than the State of New Jersey. The Draft Agreement could enable a coordinated, multi-landowner approach to lynx conservation on these private lands. This opportunity would not occur under typical consultation scenarios. The Draft Agreement would provide an opportunity to engage nearly all of the large private landowners in a dialogue concerning the recovery needs of the lynx. The Draft MFPC Agreement could facilitate the consideration of voluntary lynx conservation actions at a landscape scale across land ownership boundaries.

The conservation measures for lynx included in the Draft MFPC Agreement would support research needed to understand the effects of forest management in Maine on the physical and biological features essential to the conservation of lynx, provide a means to assess and monitor habitat, and provide an opportunity to develop management strategies for lynx and other wildlife species.

The Draft MFPC Agreement could build on the ongoing partnership between the Service, MDIFW, UMaine, CFRU and other partners. The Draft MFPC Agreement would be in place for 10 years, but could be renewed. Several incentives, for MFPC landowners to maintain this partnership for a longer period of time, include:

- The Service (at considerable cost) could designate critical habitat if landowners did not live up to the terms of the Agreement or if the physical and biological features essential to lynx began to diminish.
- Some landowners cite the Draft MFPC Agreement as part of their lynx conservation program in order to meet the requirements of certification programs and easement requirements for managing for Federally listed species.

- Funding (e.g., HFRP) may be available as an incentive to promote development of individual lynx forest management plans.

Some MFPC landowners have a track record of partnership with State and Federal conservation agencies in Maine. About half of the 28 landowners contribute as members to the CFRU. MFPC landowners have enabled this research by allowing access to their lands and logistical support; access is crucial and could be terminated by landowners if critical habitat is designated on their lands. This Draft Agreement could reinforce the continued support of MFPC landowners for funding and continued lynx research through CFRU.

Forest management on MFPC lands must meet the requirements of the Maine Forest Practices Act. This Act has resulted in the forest products industry changing to forestry methods (e.g., partial harvesting) that may be detrimental to creation of habitats that support high snowshoe hare densities. We are working with landowners and the Maine Forest Service to discuss the problems of the Maine Forest Practices Act and to encourage conservation measures that will benefit lynx.

Some landowners do not trust that the regulatory effect of critical habitat designation is limited, and they do not want an additional layer of Federal regulation on their private property. They are concerned that additional State regulations or local restrictions may be imposed as a result of the designation of critical habitat. MFPC landowners manage the largest forest acreage in Maine; several own more than 404,686 ha (1 million ac). Maintaining the cooperation of these landowners would be helpful in achieving recovery of lynx in Maine. The MFPC has indicated that they will not provide many of the benefits described in their Draft Agreement if critical habitat is designated on their members' lands.

As discussed in more detail in our final economic analysis, Plum Creek submitted a public comment indicating that they will likely abandon the Moosehead Concept Plan if critical habitat is designated in Maine. A report submitted with Plum Creek's public comments describes the economic impacts to the public and to Plum Creek in terms of potential economic benefits lost if the project is abandoned. In their public comment, Plum Creek summarized the economic impacts that would result from abandoning the Concept Plan (see page 5–19 of the final economic analysis). Plum Creek stated that a recent report valued lands in the Concept Plan at \$189.6 million to Plum

Creek. Conservation easements were valued at \$469,000 in benefits for the local residents and \$9.2 million in benefits for Maine residents. In total, public benefits of the balance easement were quantified at between \$10.8 and \$19.2 million. Our final economic analysis does not sum Plum Creek's estimated impacts with the incremental impacts of critical habitat designation because the 2007 conservation recommendations from LURC and the Service with regard to the Moosehead Concept Plan are unlikely to be affected by the designation of critical habitat, there is uncertainty regarding whether these costs will be realized, and there may also be economic benefits of not going forward with the Moosehead Concept Plan that offset the cost estimates presented by Plum Creek. If Plum Creek abandons the Concept Plan, the alternative uses of the land are largely uncertain, and we, therefore, have not predicted what sorts of economic costs and benefits would be associated with those uses. The final economic analysis estimates the potential post-designation baseline economic impacts of lynx conservation efforts in Unit 1 to range from \$8.6 to \$9.5 million at a 7 percent discount rate on an annualized basis.

#### **Benefits of Inclusion Outweigh Benefits of Exclusion**

We find that the benefits of including MFPC lands in the designation outweigh the potential benefits of exclusion. Despite the lynx conservation benefits that might arise from the partnerships that could be built or strengthened through the Draft MFPC Agreement, it provides no commitment to implement on-the-ground habitat management to conserve the physical and biological features essential to the conservation of lynx, nor is there certainty that funding will be committed for research and landscape-level lynx habitat mapping across MFPC member lands.

Section 7(a)(2) consultation on future, unforeseen projects within MFPC member lands, that are authorized, funded, carried out by Federal agencies, might result in a determination that the action will result in the destruction or adverse modification of lynx critical habitat.

Overall, the MFPC Agreement is a draft document that lacks funding, does not identify funding necessary to complete commitments (such as research projects), lacks concrete management measures, and only commits to voluntary actions. While we recognize that there is great partnership potential promised through this Draft

Agreement, we find that excluding 74 percent of a critical habitat unit based on this potential does not meet our criteria for exclusion.

Although potential economic impacts associated with the Moosehead Concept Plan have been provided to us by Plum Creek, based on our final economic analysis and because of the uncertainty regarding whether Plum Creek will abandon the project and what economic costs and benefits would be associated with alternative uses of the land, we do not believe that this final designation will result in any substantial and disproportionate economic impacts. The Secretary is not excluding MFPC lands from critical habitat based on economic impacts.

We recognize that designating MFPC member lands as critical habitat may weaken existing partnerships between the Service and MFPC and its member landowners; however, we will continue to work with private landowners to further lynx conservation.

#### **Unit 3 (Northern Rockies—Montana and Idaho)**

##### **Montana Partnership Conservation Agreement**

Subsequent to publication of the proposed rule, a consortium of private lands timber companies partnered to develop the Montana Partnership Conservation Agreement (MPCA). Partners to the agreement include F.H. Stoltze Land and Timber Company, Plum Creek Timber Company, Inc., and Stimson Lumber Company, Inc. The finalized agreement would be signed only if private lands in Montana were not included in the lynx critical habitat designation, and would affect lands in critical habitat Units 3 and 5.

We assessed the benefits of inclusion and the benefits of exclusion of these lands, and determined that these lands do not meet our criteria for exclusion from critical habitat. Our analysis follows below.

The landowners involved in the MPCA have supported lynx recovery by allowing researchers from USFS, Rocky Mountain Research Station, University of Montana, and others access to their private property to conduct lynx surveys and research and by providing logistical assistance (e.g., lodging, field maps) to lynx researchers. Plum Creek Timber Company has supported lynx research by donating funds to specific projects. We supported many of these projects, which form a large part of the scientific basis for lynx recovery in the mountain west. The Draft MPCA Agreement would reinforce MPCA funding and support for continued lynx

research. There is no assurance that MPCA funding and logistical support for lynx and snowshoe hare research will continue if critical habitat is designated on MPCA member lands.

The Draft MPCA Agreement calls for member landowners and the Service to collaboratively develop habitat management best management practices that would assist in the development of management recommendations for lynx in relation to other wildlife species. As the land managers, MPCA participation is important to ensure that guidelines will be accepted. These guidelines would be a useful resource to inform management decisions for the conservation of lynx and other wildlife.

The Draft MPCA Agreement documents a management process for reviewing research results and facilitating dissemination of results to Montana's private forest managers. The Draft Agreement includes creation of an annual lynx conservation workshop during which information exchange would occur between MPCA landowners, the Service, and other industrial and small-lot forest owners and forest products producers. An annual report would be provided to all partners summarizing lynx conservation activities and achievements.

The Draft Agreement would provide educational benefits by establishing mechanisms to broaden the understanding of lynx habitat management and disseminating the best available scientific information on lynx throughout all levels of the forest products industry. Existing training programs for foresters, loggers, and land managers would be expanded to include lynx education components. Web sites, newsletters, professional meetings and forums would provide information on lynx research and management. The MPCA signatories would coordinate an annual lynx workshop to discuss research results and identify actions that may contribute to the conservation of lynx habitat while preserving Montana's working forest; the workshop would serve to inform the Service on changes in the industry and landowner forest management practice trends. This form of education and training could result in an improved understanding of lynx habitat requirements among members of the forest products industry.

Under the Draft Agreement, participating parties would work collaboratively to improve lynx habitat management on industrial forest lands based on sound science and education of forest managers and others. Such measures might include development of landscape-scale habitat maps; experiments to evaluate the feasibility,

practicality, and effectiveness of research recommendations; and development of habitat management guidelines. However, the Draft Agreement would not prescribe measures for directly managing or protecting the physical and biological features essential to the conservation of lynx. The MPCA would support the implementation of management measures based on research if recommendations are operationally feasible, economically viable, and biologically meaningful.

The Draft Agreement would commit participating parties for at least 10 years (extendable in 5-year increments). The landowner signatories would prepare an annual report summarizing the actions taken to implement the agreement.

#### **Benefits of Inclusion**

The primary benefit of including an area within a critical habitat designation is the protection provided by section 7(a)(2) of the Act, which directs Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a threatened or endangered species and do not result in the destruction or adverse modification of critical habitat. The regulatory benefit of designating critical habitat on lands subject to the Draft MPCA Agreement in Montana is currently low, because few Federal actions trigger the consultation provisions under section 7(a)(2) of the Act. Since the lynx was listed in 2000, there has been one formal consultation on lynx on private lands in Montana. This formal opinion covered activities under the USDA Natural Resources and Conservation Service's Forest Stand Improvement Practices program. Under this programmatic formal consultation, five second-tier site-specific consultations have occurred. In addition, approximately two informal consultations occurred in Montana for private lands activities, involving road access requests across USFS lands to private lands.

Federal actions have occurred on MPCA lands, and because of this, it is possible that section 7 consultations will occur in the future. Although a Federal nexus on projects in this area is rare, designation of critical habitat could provide a conservation benefit for lynx habitat.

A potential benefit of critical habitat designation would be to signal the importance of designated lands to Federal agencies, scientific organizations, State and local governments, and the public to encourage conservation efforts to benefit the Canada lynx and its habitat.

The Draft Agreement would not require specific land management actions to be taken by landowners. The MPCA landowners each manage their properties differently and own different amounts of property in different stand conditions. The MPCA can only serve as a vehicle to promote partnerships and educate forest owners so that they may voluntarily act to fulfill the conservation objective of the Draft Agreement. Individual MPCA landowners' land management decisions or activities to fulfill the Agreement are voluntary. No commitment would be made through the agreement to allow Service access to member lands in order to monitor lynx or effects of management on lynx. All of these factors indicate that benefits to lynx by excluding these lands are very speculative.

#### **Benefits of Exclusion**

The Draft MPCA Agreement would commit partners to developing voluntary lynx management guidelines and conducting education and outreach across private timberlands in Montana. These commitments would strengthen partnerships in lynx recovery and could result in better management of the physical and biological features essential to lynx.

The Draft Agreement would enable a coordinated approach to landowner education and conservation. This opportunity might not occur under section 7 consultation. The Draft Agreement would provide an opportunity to engage several large private landowners and many small wood products companies in a dialogue concerning the recovery needs of the lynx. The Draft Agreement could facilitate the consideration of voluntary lynx conservation actions at a landscape scale across land ownership boundaries.

The MPCA signatory landowners are the three largest landowners in the critical habitat Units 3 and 5 in Montana, and collectively own approximately 35 percent of the critical habitat area in Montana. Designating critical habitat might provide additional protection for lynx, because some actions are known to trigger consultation through the Section 7(a)(2) process. The actions included in the Draft Agreement provide an opportunity to develop management strategies for lynx.

One MPCA landowner (Plum Creek) has a long track record of partnership with State and Federal conservation agencies in Montana. The Draft Agreement would reinforce MPCA landowners' continued support for funding and continued lynx research.

Some Montana forest landowners have a negative perception of critical habitat, and believe that designating critical habitat on their lands would result in negative consequences to them. They do not want an additional layer of Federal regulation over their private property. They are concerned that additional state regulations or other local restrictions may be imposed as a result of the designation of critical habitat. Designation on MPCA lands could make working cooperatively or effectively on lynx conservation with landowners more difficult. If MFPC members' lands are designated, the Draft Agreement would not be implemented and commitments to education and lynx guidelines would be no longer be offered.

Plum Creek Timber Company and F.H. Stoltze Land and Lumber Company submitted public comments containing their own economic analysis of critical habitat designation for the lynx (see pages 5–26 of our final economic analysis for more details). Although the economic analyses provide valuable information on potential development impacts in Unit 3, they cannot be incorporated into our final economic analysis because their assumptions differ from those applied in our analysis. Stoltze's economic analysis estimates the lost development option value on its land, assuming that critical habitat designation would preclude future development, to be \$120 million. Plum Creek's economic analysis estimates that the greatest impact of critical habitat designation will be a reduced ability to develop their lands in the future. Assuming that Plum Creek would sell its land over a 20-year period, it estimates the total value at risk associated with the designation of critical habitat to be approximately \$138 million (discounted at 7 percent). Plum Creek also submitted technical comments providing information on the locations and extent of Plum Creek land holdings and anticipated development projects within Unit 3. Although there may be increased regulatory stringency in certain Montana Counties as a result of critical habitat designation, the locations, size, and value of future development proposals is uncertain, as is the frequency with which they will occur in future years. Absent additional information on the specific land use restrictions that may be imposed, the cost of those restrictions, and their relation to lynx conservation, no impacts to development activities are quantified for Unit 3.

### Benefits of Inclusion Outweigh Benefits of Exclusion

We find that the benefits of including MPCA lands in the designation outweigh the potential benefits of exclusion. Despite the lynx conservation benefits that might arise from the partnerships that could be built or strengthened through the Draft MPCA Agreement, it provides no commitment to implement on-the-ground habitat management to conserve the physical and biological features essential to the conservation of lynx, nor is there certainty that funding will be committed for research and landscape-level lynx habitat mapping across MPCA member lands.

Section 7(a)(2) consultation on future, unforeseen projects within MPCA member lands, that are authorized, funded or carried out by Federal agencies, might result in a determination that the action will result in the destruction or adverse modification of lynx critical habitat.

Overall, the MPCA Agreement is a draft document that lacks funding, does not identify funding necessary to complete commitments (such as research projects), lacks concrete management measures, and only commits to voluntary actions. While we recognize that there is great partnership potential promised through this Draft Agreement, we find that excluding a significant portion (33 percent) of one critical habitat unit (and a small portion of another) based on this potential does not meet our criteria for exclusion.

Although potential economic impacts associated with lands owned by Plum Creek and Stoltze have been provided, based on our final economic analysis and because of the uncertainty regarding the specific land use restrictions that may be imposed, the cost of those restrictions, and their relation to lynx conservation, we do not believe that this final designation will result in any substantial and disproportionate economic impacts. The Secretary is not excluding MPCA lands from critical habitat based on economic impacts.

We recognize that designating MPCA member lands as critical habitat may weaken existing partnerships between the Service and MPCA and its member landowners; however, we will continue to work with private landowners to further lynx conservation.

### Unit 4 (North Cascades—Washington)

#### Washington Department of Natural Resources Lynx Habitat Management Plan for DNR-Managed Lands

The Washington Department of Natural Resources Lynx Habitat

Management Plan for DNR-managed Lands (WDNR LHMP) encompasses 126,212 ac (197 mi<sup>2</sup>) (51,076 ha/511 km<sup>2</sup>) of WDNR-managed lands distributed throughout north-central and northeastern Washington in areas delineated as Lynx Management Zones in the Washington State Recovery Lynx Plan (Stinson 2001, p. 39; WDNR 2006, pp. 5–13). The WDNR LHMP was finalized in 2006, and is a revision of the lynx plan that WDNR has been implementing since 1996 (WDNR 1996, entire). The 1996 plan was developed as a substitute for a species-specific critical habitat designation required by Washington Forest Practices rules in response to the lynx being State-listed as threatened (WDNR 2006, p. 5). The 2006 WDNR LHMP provides further provisions to avoid the incidental take of lynx (Martin 2002, entire; WDNR 2006, p. 6). WDNR is committed to following the LHMP until 2076, or until the lynx is delisted (WDNR 2006, p. 6). WDNR requested that lands subject to the plan be excluded from critical habitat.

The WDNR LHMP contains measures to guide WDNR in creating and preserving quality lynx habitat through its forest management activities. The objectives and strategies of the LHMP are developed for multiple planning scales (ecoprovince and ecodivision, Lynx Management Zone, Lynx Analysis Unit (LAU), and ecological community), and include:

1. Encouraging genetic integrity at the species level by preventing bottlenecks between British Columbia and Washington by limiting size and shape of temporary non-habitat along the border and maintaining major routes of dispersal between British Columbia and Washington;

2. Maintaining connectivity between subpopulations by maintaining dispersal routes between and within zones and arranging timber harvest activities that result in temporary non-habitat patches among watersheds so that connectivity is maintained within each zone;

3. Maintaining the integrity of requisite habitat types within individual home ranges by maintaining connectivity between and integrity within home ranges used by individuals and/or family groups; and

4. Providing a diversity of successional stages within each LAU and connecting denning sites and foraging sites with forested cover without isolating them with open areas by prolonging the persistence of snowshoe hare habitat and retaining coarse woody debris for denning sites (WDNR 2006, p. 29).

The LHMP identifies specific guidelines to achieve the objectives and strategies at each scale; it also describes how WDNR will monitor and evaluate the implementation and effectiveness of the HMP (WDNR 2006, pp. 29–63). WDNR has been managing for lynx for over a decade, their management strategies appear to be effective.

### Benefits of Inclusion

On WDNR State lands, it is uncommon for an action with a Federal nexus that triggers consultation under section 7 of the Act to occur; therefore, little benefit would be realized through section 7 consultation if these lands were included in the designation.

Some educational benefits to designating critical habitat for lynx on WDNR managed lands may exist. However, we believe there is already substantial awareness of the lynx and conservation issues related to the lynx through the species being listed both under the Act and Washington State law; through the public review process for the WDNR HMP, Washington's Lynx Recovery Plan and the revision of the Okanogan-Wenatchee National Forest Management Plan; lynx and snowshoe hare research being conducted by the USFS Pacific Northwest Research Station, Washington State University, University of Washington, and the University of Montana; surveys being conducted by Washington Department of Fish and Wildlife and the USFS; and State of Washington Web sites (e.g., <http://wdfw.wa.gov/wlm/diversty/soc/recovery/lynx/lynx.htm>, [http://www.dnr.wa.gov/htdocs/amp/sepa/lynx/1\\_toc.pdf](http://www.dnr.wa.gov/htdocs/amp/sepa/lynx/1_toc.pdf)).

### Benefits of Exclusion

The WDNR LHMP should provide substantial protection of features essential to the conservation of lynx on WDNR lands, and should provide a greater level of management for the lynx on these State lands than designation of critical habitat. The measures contained in the WDNR LHMP exceed any measures that might result from critical habitat designation, because the LHMP provides lynx-specific objectives and strategies for different planning scales, guidelines to meet the objectives, and monitoring to evaluate implementation and effectiveness. As a result, we do not anticipate any actions on these lands that would destroy or adversely modify the areas.

The exclusion of WDNR lands from critical habitat would help preserve the partnerships that we have developed with them through development and implementation of the 2006 LHMP and the original 1996 lynx plan, both of

which provide for long-term lynx conservation.

#### **Benefits of Exclusion Outweigh Benefits of Inclusion**

We evaluated the proposed exclusion of approximately 126,212 ac (51,076 ha) of lands managed by the WDNR. Including WDNR areas in the final designation would likely not lead to any changes in WDNR management (to further avoid destroying or adversely modifying that habitat), and therefore the benefits of inclusion are low.

We determined that the benefits of excluding these lands in Unit 4 outweigh the benefits of including these lands as critical habitat. Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we find that greater benefits to lynx exist by excluding WDNR lands from the final designation.

We find that few additional conservation benefits would be realized through section 7 of the Act, because Federal actions are uncommon on this State land. The habitat conservation measures addressing the features essential to conservation of the lynx are already being implemented on WDNR lands under the WDNR HMP, have been proven to be effective, will be in place until at least 2076, and are providing for physical and biological features essential to the conservation of the species.

#### **Exclusion Will Not Result in Extinction of the Species**

We do not believe that the exclusion of 126,212 ac (51,076 ha) from Unit 4 of this revised critical habitat designation will result in the extinction of the species, because the WDNR plans provide for the conservation of the species and the physical and biological features essential to it. The jeopardy standard of section 7(a)(2) of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the subspecies will not go extinct. The protections afforded to the lynx under the jeopardy standard will remain in place for the areas excluded from revised critical habitat.

#### **Economic Analysis**

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such

areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed revised critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on October 21, 2008 (73 FR 62450). We accepted comments on the draft analysis until November 20, 2008.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the lynx. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections and conservation efforts that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis, as they are considered to be part of the regulatory and policy baseline.

As discussed in the October 21, 2008, notice announcing the availability of the draft economic analysis (73 FR 62450), the draft analysis estimates quantifiable discounted future incremental costs of the critical habitat designation to be \$2.09 million over 20 years (\$140,000 annually) using a 3 percent discount rate, or \$1.48 million over 20 years (\$139,000 annually) using a 7 percent discount rate. The EA also acknowledges that there may be additional costs, particularly to landowners, but these costs are too speculative to quantify at this time.

After taking into consideration public comment on the proposal, the draft

economic analysis was finalized, and we evaluated whether any area of proposed critical habitat should be excluded due to economic impacts (refer to Exclusions Under Section 4(b)(2) of the Act section above). The Secretary is not excluding any lands from critical habitat based on economic impacts. We do not believe that this final designation will result in any substantial and disproportionate economic impacts.

A copy of the draft and final economic analysis with supporting documents are included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Montana Field Office (see **ADDRESSES** section) or from the Internet at <http://mountain-prairie.fws.gov/species/mammals/lynx/criticalhabitat.htm>.

#### **Required Determinations**

##### *Regulatory Planning and Review*

The Office of Management and Budget (OMB) has determined that this final rule is significant and has reviewed it under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

a. Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

b. Whether the rule will create inconsistencies with other Federal agencies' actions.

c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. Whether the rule raises novel legal or policy issues.

OMB has determined that this rule is significant because it raises novel legal or policy issues.

##### *Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). Although no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a

substantial number of small entities, we completed a final regulatory flexibility analysis, and our final economic analysis determines that this final rule does not result in a significant economic impact on a substantial number of small entities.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if this final revised designation of critical habitat for the Canada lynx would affect a substantial number of small entities, we considered the number of affected small entities within particular types of economic activities (e.g., timber harvesting, livestock grazing, residential and related development, recreation activities, mining, and transportation). We considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat affects activities conducted, funded, permitted, or authorized by Federal agencies.

In our final economic analysis of this final revised critical habitat designation, we evaluated the potential economic effects on small business entities from conservation actions related to the listing of the Canada lynx and revised designation of the species' critical habitat. The activities affected by Canada lynx conservation efforts may include land development,

transportation and utility operations, and conservation on public and tribal lands. The following is a summary of the information contained in the final economic analysis:

#### a. Development

According to the final economic analysis, Canada lynx development-related costs account for less than 1 percent of forecast incremental costs, and are estimated at \$8,130 (in 2008 dollars) over 20 years. The costs consist of administrative costs of conducting consultations under section 7 of the Act on development projects. As a result of this information, we determined that the final revised designation is not anticipated to have a significant economic impact on a substantial number of small businesses with respect to development activities.

#### b. Forest Management

Potential costs to forest management in designated habitat account for another 16 percent of forecast costs. Undiscounted costs are estimated at \$233,000 (in 2008 dollars) over 20 years. The costs consist of administrative costs of conducting consultations under section 7 of the Act on forest management. These costs are expected to be borne by Federal and State governments, private timber landowners, tribal landowners, and other private landowners across the units of the designation. The administrative costs would be divided among many entities and projects over a 20-year period. As a result of this information, we have determined that the final revised designation is not anticipated to have a significant economic impact on small forest management businesses.

#### c. Recreation

Future costs associated with managing recreation account for an additional 19 percent of forecast costs. Costs are estimated to be \$285,000 (in 2008 dollars) over 20 years. The costs consist of administrative costs of conducting consultations under section 7 of the Act associated with managing recreation (i.e., reductions of snowmobile opportunities) in Unit 4 (North Cascades). Incremental costs would be incurred by State and Federal agencies. As a result of this information, we have determined that the final revised designation is not anticipated to have a significant economic impact on a substantial number of small recreation businesses.

#### d. Lynx Management Plans

Future costs associated with development of lynx management plans account for approximately one percent of forecast costs. Costs are estimated to be \$12,300 (in 2008 dollars) over 20 years. The costs consist of administrative costs of conducting consultations under section 7 of the Act on lynx management plans by Federal agencies. As a result of this information, we have determined that the final revised designation of critical habitat is not anticipated to have a significant economic impact on a substantial number of small businesses.

#### e. Mining/Oil and Gas

Future costs associated with mining and oil and gas exploration and development activities account for an additional 8 percent of forecast costs. Costs are estimated at \$115,000 (in 2008 dollars) over 20 years. The costs consist of administrative costs of conducting consultations under section 7 of the Act on mining and oil and gas projects by Federal agencies in Units 2, 4, and 5. As a result of this information, we have determined that the final revised designation of critical habitat is not anticipated to have a significant economic impact on a substantial number of small mining or oil and gas businesses.

#### *Executive Order 13211*

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As described above, this rule is considered a significant regulatory action under E.O. 12866 due to potential novel legal and policy issues. OMB's guidance in M-01-27 for implementing this Executive Order outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. The final economic analysis finds that none of these outcomes will result from the critical habitat designation for lynx (refer to Appendix B). Thus, based on the information in our economic analysis, no energy-related incremental impacts associated with Canada lynx revised critical habitat are expected other than administrative costs. Costs are estimated at \$115,000 (in 2008 dollars) over 20 years. The costs consist of administrative costs of conducting consultations under section 7 of the Act on mining and oil and gas projects by Federal agencies in Units 2, 4, and 5. As such, the designation of critical habitat

is not expected to significantly affect energy supplies, distribution, or use and a Statement of Energy Effects is not required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

a. This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities receiving Federal funding, assistance, or permits, or otherwise requiring approval or authorization from a Federal agency for

an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

b. We do not believe that this rule would significantly or uniquely affect small governments. The economic analysis discusses potential impacts of critical habitat designation for the Canada lynx on timber management, recreation, land development, mining, oil and gas development, and the development of management plans. The analysis estimates costs of the rule to be \$2.11 million at present value over a 20-year period (\$142,000 annualized) assuming a 3 percent discount rate, and \$1.49 million (\$141,000 annualized) assuming a 7 percent discount rate. Most of the impacts are expected to affect Federal agencies through administrative costs associated with consultations under section 7 of the Act. Impacts on small governments are not anticipated, or they are anticipated to be passed through to consumers. The SBA does not consider the Federal Government to be a small governmental jurisdiction or entity. Consequently, we do not believe that the designation of critical habitat for the Canada lynx will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

*Takings*

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the lynx in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the lynx does not pose significant takings implications.

*Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of, the critical

habitat designation with appropriate State resource agencies in Idaho, Maine, Minnesota, Montana, Washington, and Wyoming. We believe that this resulting final designation of critical habitat for the lynx will have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas important to the conservation of the species are more clearly defined, and the primary constituent element of the habitat essential to the survival and conservation of the species is specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

*Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Act. This final designation uses standard property descriptions and identifies the primary constituent element within the designated areas to assist the public in understanding the habitat needs of the lynx.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This final rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act*

We have undertaken a NEPA analysis for this critical habitat designation and notified the public of the availability of the draft environmental assessment for the proposed rule on October 21, 2008. The final environmental assessment, as well as a Finding of No Significant Impact (FONSI), is available upon request from the Field Supervisor, Montana Fish and Wildlife Office (see **ADDRESSES** section) or on our Web site at <http://mountain-prairie.fws.gov/>

*species/mammals/lynx/  
criticalhabitat.htm*

*Government-to-Government  
Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments," and the Department of the Interior Manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. Tribal lands determined to be essential to the conservation of the lynx have been excluded from this critical habitat

designation. Please refer to our discussion of Tribal lands under the Relationship of Critical Habitat to Tribal Lands section of this final rule.

**References Cited**

A complete list of all references cited in this rulemaking is available on the Web site <http://mountain-prairie.fws.gov/species/mammals/lynx/> or upon request from the Field Supervisor, Montana Field Office (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h), revise the entry for "Lynx, Canada" under "MAMMALS" to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate popu- lation where endan- gered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Lynx, Canada .....	<i>Lynx canadensis</i> .....	U.S.A. (AK, CO, ID, ME, MI, MN, MT, NH, NY, OR, UT, VT, WA, WI, WY), Canada, circumboreal.	CO, ID, ME, MI, MN, MT, NH, NY, OR, UT, VT, WA, WI, WY.	T	692	17.95(a)	17.40(k)
*	*	*	*	*	*		*

■ 3. In § 17.95(a), revise the entry for "Canada lynx (*Lynx canadensis*)" to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

(a) *Mammals.*

\* \* \* \* \*

Canada lynx (*Lynx canadensis*)

(1) Critical habitat units are depicted on the maps below for the following States and Counties:

- (i) Idaho: Boundary County;
- (ii) Maine: Aroostook, Franklin, Penobscot, Piscataquis, and Somerset Counties;
- (iii) Minnesota: Cook, Koochiching, Lake, and St. Louis Counties;
- (iv) Montana: Carbon, Flathead, Gallatin, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Park, Pondera, Powell, Stillwater, Sweetgrass, and Teton Counties;

(v) Washington: Chelan and Okanogan Counties; and

(vi) Wyoming: Fremont, Lincoln, Park, Sublette, and Teton Counties.

(2) Within these areas, the primary constituent element for the Canada lynx is boreal forest landscapes supporting a mosaic of differing successional forest stages and containing all of the following:

(i) Presence of snowshoe hares and their preferred habitat conditions, which include dense understories of young trees, shrubs or overhanging boughs that protrude above the snow, and mature multistoried stands with conifer boughs touching the snow surface;

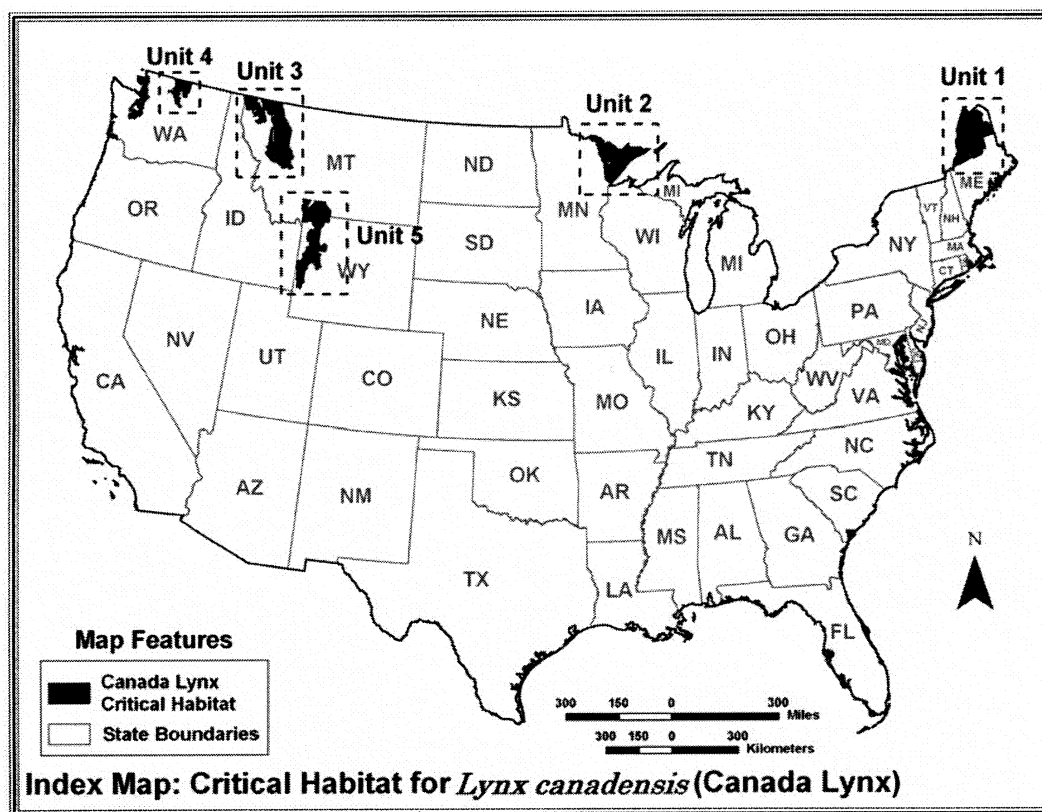
(ii) Winter snow conditions that are generally deep and fluffy for extended periods of time;

(iii) Sites for denning that have abundant coarse woody debris, such as downed trees and root wads; and

(iv) Matrix habitat (e.g., hardwood forest, dry forest, non-forest, or other habitat types that do not support snowshoe hares) that occurs between patches of boreal forest in close juxtaposition (at the scale of a lynx home range) such that lynx are likely to travel through such habitat while accessing patches of boreal forest within a home range.

(3) Critical habitat does not include waterbodies, including lakes, reservoirs, or rivers, or human-made structures existing on the effective date of this rule, such as buildings, paved and gravel roadbeds, and the land on which such structures are located.

(4) Index map for Canada lynx critical habitat follows:



(5) Unit 1: Northern Maine; Aroostook, Franklin, Penobscot, Piscataquis and Somerset Counties, Maine.

(i) Coordinate projection: UTM, NAD83, Zone 19, Meters. Coordinate definition: (easting, northing).

(ii) Polygon bounded by the following coordinates: (416400, 5140154) (417029, 5140238) (417418, 5140057) (417516, 5139824) (417280, 5139090) (417041, 5139162) (416973, 5139038) (416958, 5138720) (416760, 5138840) (416786, 5138700) (416604, 5138778) (416353, 5138495) (416673, 5138152) (424087, 5138050) (424076, 5135061) (423015, 5134950) (422555, 5134407) (422442, 5133983) (422118, 5133876) (421865, 5133501) (421909, 5132984) (421694, 5132707) (421490, 5132692) (421522, 5132487) (421285, 5132267) (421388, 5131239) (420719, 5131112) (420703, 5130486) (420446, 5130180) (420573, 5129900) (420432, 5129976) (420390, 5129836) (420961, 5129391) (420829, 5128936) (420360, 5128635) (420352, 5128196) (414078, 5128211) (413903, 5108332) (403589, 5108497) (403617, 5108750) (403932, 5109105) (404247, 5110111) (404268, 5110701) (404508, 5111058) (404209, 5111354) (404212, 5111567) (404066, 5111434) (403957, 5111630) (403609, 5111674) (403663, 5111827) (403451, 5111946) (403518, 5112081) (403288, 5112396) (403079, 5112416) (402763, 5112946) (402350,

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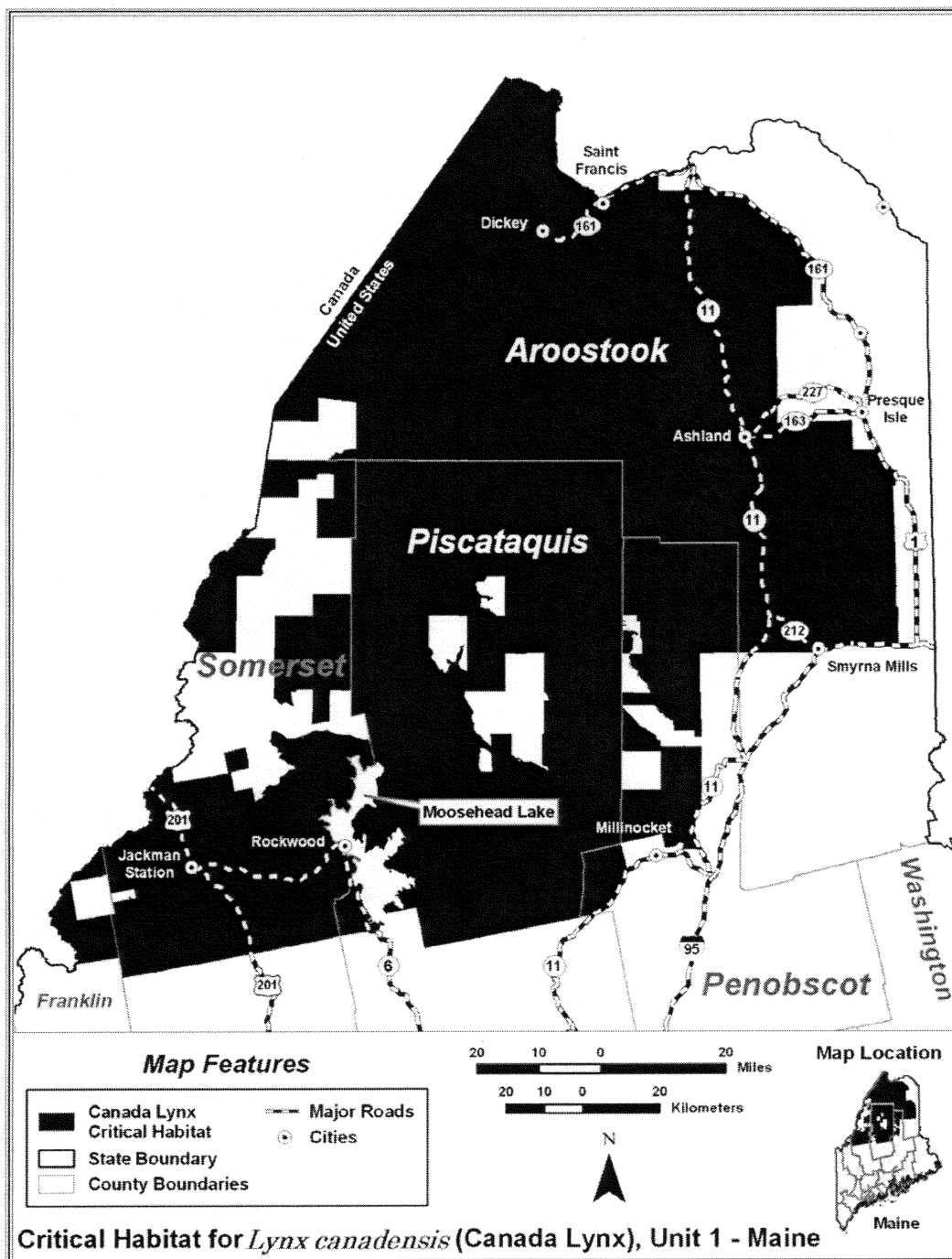
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5064314) (532143, 5063634) (531636,  
5062592) (531585, 5062178) (532238,  
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5058935) (533825, 5057403), excluding  
the island polygons bounded by the  
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5082709), b) (479953, 5077619) (479924,  
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5078996) (479866, 5079938) (479766,  
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5080580) (486496, 5080310) (485946,  
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5080202) (487669, 5079975) (487990,  
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5098030) (472861, 5096680) (473842,  
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5094572) (474536, 5093901) (474778,  
5093935) (474657, 5093578) (475069,  
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5089418) (475228, 5088407) (475734,  
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5085245) (478450, 5085040) (479362,  
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5106659) (468445, 5106719) (468970,  
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5103992) (472713, 5103914) (473346,  
5103453) (473341, 5117800) (463623,  
5117895) (463664, 5109846) (464395,  
5109021) (464830, 5108057) (464273,  
5107543) (464353, 5106869) (465334,  
5105990) (465868, 5104563) (466148,  
5104243) (466698, 5103841) (467171,  
5104129) (467430, 5103471) (467820,  
5103153), excluding the island polygons  
bounded by the following coordinates:  
(513717, 5116742) (513718, 5116540)  
(514376, 5116517) (514529, 5116386)  
(514380, 5116088) (513719, 5116170)  
(513718, 5115655) (514919, 5115604)  
(514765, 5115421) (514620, 5115487)  
(514565, 5115286) (513945, 5115325)  
(513699, 5115190) (513711, 5114024)  
(514843, 5114026) (515362, 5114145)

(515600, 5114386) (515533, 5113983) (517813, 5103517) (516534, 5104235) 5122624) (479459, 5122600) (479490,  
 (515327, 5113966) (515267, 5113756) (516042, 5104351) (515949, 5104522) 5122456) (480115, 5122576) (479912,  
 (515582, 5113670) (515884, 5114019) (516191, 5104509) (516158, 5104712) 5122239) (479395, 5122059) (479041,  
 (516058, 5113854) (516994, 5113761) (515717, 5104699) (515672, 5104971) 5121432) (478750, 5121537) (478881,  
 (517213, 5113486) (517532, 5113728) (516144, 5105068) (515879, 5105499) 5121840) (478542, 5122287) (477539,  
 (517487, 5113372) (517656, 5113152) (515724, 5105422) (515864, 5105252) 5122450) (477039, 5122326) (476943,  
 (517849, 5113163) (517863, 5112906) (515778, 5105118) (515612, 5105120) 5120118) (479311, 5119464) (479779,  
 (517583, 5112667) (516876, 5113081) (515480, 5105384) (515778, 5105957) 5118849) (480469, 5118367) (480792,  
 (516668, 5112974) (516709, 5112814) (515742, 5106525) (515448, 5107126) 5118318) (480895, 5117922), and  
 (516389, 5112925) (515935, 5112465) (515592, 5107646) (515804, 5107743) excluding the island polygons bounded  
 (515849, 5112210) (516477, 5112181) (515744, 5107967) (518793, 5107949) by the following coordinates: (371100,  
 (516485, 5111960) (516777, 5111753) (518717, 5111938) (518324, 5111938) 5047834) (372416, 5040243) (372542,  
 (516486, 5111452) (516586, 5111206) (518374, 5116237) (517498, 5116242) 5040170) (372542, 5039535) (382353,  
 (516447, 5110863) (516340, 5111114) (517470, 5117924) (513720, 5117929) 5041114) (381765, 5044067) (384623,  
 (516504, 5110541) (516299, 5109920) (513717, 5116742), excluding the island polygons bounded by the following  
 (516396, 5108705) (516077, 5108921) coordinates: (480895, 5117922) (483208, 5117969) (483166, 5127993) (478242,  
 (516076, 5108549) (515915, 5108494) 5128006) (478362, 5127510) (477921, 5127090) (477988, 5126692) (477876,  
 (515901, 5108814) (515836, 5108365) 5126608) (476096, 5126601) (475632, 5126339) (475646, 5125802) (476020,  
 (515658, 5108258) (515711, 5108007) 5124991) (475934, 5124131) (476289, 5124172) (476690, 5123507) (477318,  
 (513692, 5108005) (513670, 5098024) 5123063) (478316, 5123062) (479020, 5122862) (479240, 5122962) (479189,  
 (521046, 5097931) (520991, 5098233) 5122624) (479459, 5122600) (479490,  
 (520317, 5099019) (520426, 5099452) 5122456) (480115, 5122576) (479912,  
 (520237, 5099969) (519460, 5100732) 5122239) (479395, 5122059) (479041,  
 (519225, 5100795) (518258, 5102129) 5121432) (478750, 5121537) (478881,  
 (517684, 5102188) (517681, 5102652) 5121840) (478542, 5122287) (477539,  
 (517811, 5102611) (517693, 5103365) 5122450) (477039, 5122326) (476943,  
 (iv) Map of Unit 1, Northern Maine, follows:



## BILLING CODE 4310-55-P

(6) Unit 2: *Northeastern Minnesota; Cook, Koochiching, Lake, and St. Louis Counties.*

(i) Coordinate Projection: UTM, NAD83, Zone 15, Meters. Coordinate Definition: (easting, northing)

(ii) Polygon bounded by the following coordinates: (485851, 5386598) (487031,

5385449) (493478, 5385989) (501006, 5385538) (503370, 5386443) (503698, 5386277) (503742, 5383856) (505199, 5383680) (506669, 5382536) (507803, 5382385) (520034, 5376270) (525283, 5377047) (526934, 5376672) (527650, 5373939) (527629, 5373409) (527187, 5372687) (527496, 5372267) (526808, 5371864) (525551, 5372121) (525010, 5371520) (523215, 5371634) (522261, 5371345) (522081, 5370214) (521489, 5368900) (521544, 5368616) (521240, 5367800) (523065, 5365665) (524909, 5365241) (525502, 5364809) (531538, 5365306) (534244, 5366112) (536425, 5366133) (537774, 5364249) (538324, 5363977) (538811, 5362962) (540222, 5362390) (540234, 5361025) (538768, 5357770) (539282, 5355573) (540666, 5352664) (541724, 5350845) (542131, 5350375) (542525, 5350292) (543395, 5349087) (544997, 5345416) (545028, 5345058) (545323, 5344651) (545115, 5344603) (545106, 5344395) (545474, 5344442) (545592, 5344280) (545421, 5343871) (545491, 5343638) (545650, 5343626) (545695, 5343228) (546081, 5342644) (546125, 5342169) (546395, 5341597) (546732, 5341312) (546800, 5340975) (547025, 5341199) (546936, 5341317) (547371, 5341246) (548154, 5342103) (548944, 5342290) (549150, 5342617) (549596, 5342514) (550494, 5342903) (550754, 5343177) (553425, 5343653) (554224, 5344143) (553913, 5345066) (552701, 5345985) (552347, 5346682) (552444, 5347215) (552285, 5347274) (551818, 5348580) (552311, 5350577) (551462, 5351690) (551561, 5352365) (552277, 5352518) (552696, 5354576) (554626, 5355960) (557717, 5355297) (558107, 5354868) (558758, 5354922) (558725, 5355251) (559083, 5355662) (559588, 5355511) (559737, 5355309) (560832, 5355613) (560949, 5356227) (561296, 5356474) (561937, 5356884) (563310, 5357206) (563453, 5356161) (567846, 5355943) (568295, 5356432) (569979, 5356505) (570559, 5355277) (570742, 5355165) (570553, 5354927) (570632, 5353948) (571267, 5353643) (571818, 5352875) (574090, 5352383) (573170, 5349780) (573223, 5348638) (573647, 5347798) (573727, 5346277) (575016, 5345664) (575707, 5344274) (575905, 5344260) (576022, 5343966) (576472, 5344374) (576278, 5344623) (576361, 5344933) (577578, 5344862) (577657, 5344501) (578069, 5344130) (577339, 5343926) (577307,

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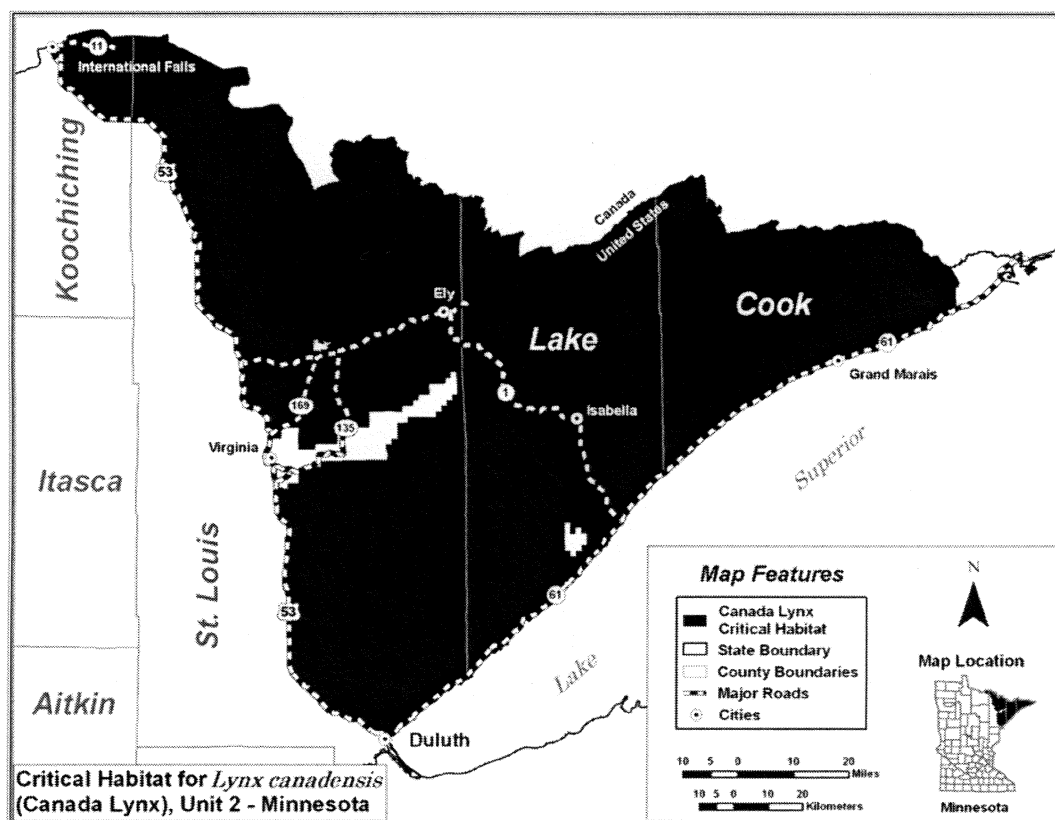
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5296918) (548901, 5297169) (548637, 5297063) (548182, 5297486) (548182, 5298287) (547782, 5298287) (547782, 5297886) (546982, 5297886) (546982, 5297486), and excluding the island polygons bounded by the following coordinates: (620214, 5238106) (620245, 5236496) (621852, 5236533) (621903, 5234896) (623485, 5234904) (623455, 5236528) (625064, 5236573) (625051, 5238228) (626640, 5238269) (626567, 5241495) (624962, 5241459) (624942, 5243061) (623327, 5243035) (623340, 5241425) (621725, 5241388) (621690, 5244578) (620112, 5244552) (620214, 5238106).

(iii) Map of Unit 2, Northeastern Minnesota, follows:

BILLING CODE 4310-55-P



(7) Unit 3: Northern Rocky Mountains; Boundary County, Idaho; Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Pondera, Powell, and Teton Counties, Montana.

(i) Coordinate Projection: UTM, NAD83, Zone 12, Meters. Coordinate Definition: (easting, northing).

(ii) Polygon bounded by the following coordinates: (122575, 5440417) (157217, 5438140) (157554, 5436275) (158180, 5436163) (158504, 5436804) (158713, 5436719) (159139, 5436012) (160089, 5436595) (160868, 5435079) (160974,

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5426675) (156137, 5426261) (156427, 5426502) (156766, 5426067) (156779, 5425765) (156273, 5425825) (156096, 5426127) (155300, 5425220) (154958, 5425067) (154586, 5425370) (153840, 5424521) (154106, 5424210) (154067, 5423779) (154650, 5423848) (155034, 5422919) (154705, 5422481) (154461, 5422392) (153984, 5421141) (153345, 5421486) (153145, 5422135) (152810, 5422450) (152819, 5423034) (153064, 5423738) (152714, 5424072) (152690, 5424340) (152370, 5424533) (152331, 5424851) (151863, 5424801) (151305, 5424226) (151061, 5424190) (150786, 5423754) (150456, 5423775) (150188, 5424305) (150557, 5424660) (150152, 5424873) (150140, 5425235) (150665, 5425664) (151009, 5425732) (151264, 5425606) (151860, 5426063) (151470, 5425930) (150952, 5426235) (149565, 5425466) (149108, 5425769) (149402, 5426456) (148590, 5426774) (148572, 5427391) (148019, 5427635) (147510, 5428763) (147235, 5428772) (146980, 5429121) (146956, 5429743) (146689, 5429869) (146281, 5430816) (145966, 5431171) (145510, 5432868) 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(iii) Polygon bounded by the following coordinates: (186659, 5436276) (186882, 5435602) (186841, 5434804) (186367, 5433736) (186098, 5433685) (185655, 5434141) (184916, 5433557) (184407, 5433601) (184189, 5433886) (183498, 5433536) (182371, 5433774) (182676, 5433326) (182541, 5433096) (183135, 5433131) (184170, 5432794) (184649, 5432090) (184883, 5432465) (185373, 5432513) (186224, 5432036) (186519, 5431094) (186167, 5429769) (184779, 5428432) (185465, 5428323) (186932, 5428952) (187175, 5428882) (187574, 5428058) (188147, 5425814) (187946, 5424236) (187686, 5423653) (187225, 5423266) (186746, 5423248) (186518, 5422900) (186038, 5422623) (185049, 5422489) (184855, 5422160) (186618, 5421235) (186962, 5420884) (186956, 5420425) (186383,

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(v) Polygon bounded by the following  
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(vi) Polygon bounded by the following coordinates: (269457, 5371783) (269786, 5371447) (269854, 5371083) (269453, 5370783) (269365, 5370196) (269677, 5369776) (270514, 5369467) (270870, 5369048) (270717, 5367427) (271258, 5366990) (272141, 5366782) (272428, 5366399) (272372, 5365999) (272094, 5365892) (271788, 5365235) (271529, 5365116) (271288, 5365261) (271066, 5364956) (269594, 5364442) (268983, 5365201) (268825, 5365775) (268239, 5366570) (267810, 5368658) (267298, 5369524) (266918, 5370662) (266995, 5370802) (266787, 5371069) (267044, 5371736) (267591, 5371745) (268105, 5372525) (268659, 5372453) (269457, 5371783).

(vii) Polygon bounded by the following coordinates: (247372, 5433204) (247373, 5433069) (247561, 5433194) (290409, 5431217) (309103, 5430543) (308865, 5423261) (317266, 5406552) (320872, 5402670) (321867, 5400760) (322070, 5397708) (321814, 5396212) (323229, 5392963) (329640, 5375469) (334120, 5364583) (357329, 5344950) (357236, 5341628) (356476, 5342206) (356151, 5341976) (356086, 5341596) (356100, 5341196) (357172, 5339352) (357086, 5336382) (358212, 5336115) (358537, 5335663) (358855, 5335810) (359345, 5335610) (359326, 5334752) (359004, 5334470) (359304,

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(252044, 5426033) (251759, 5425845) (251861, 5427788) (251687, 5427449) (251668, 5426674) (251453, 5426409) (251229, 5426966) (251252, 5427549) (251015, 5427668) (250973, 5428059) (251166, 5428965) (251924, 5430593) (251495, 5430382) (250738, 5428827) (250176, 5428390) (250245, 5429947) (250110, 5429607) (250197, 5429195) (249858, 5429170) (249589, 5429783) (249556, 5430536) (249302, 5430159) (248371, 5431627) (248359, 5431927) (248069, 5431952) (247988, 5432381) (247711, 5432437) (247231, 5433003) (247219, 5433212) (247372, 5433204), excluding the island polygons bounded by the following coordinates: (289728, 5296719) (287436, 5297700) (285628, 5297666) (286024, 5294148) (285732, 5291528) (285682, 5288116) (286591, 5288133) (286606, 5287337) (286973, 5285979) (289243, 5280109) (290182, 5278535) (291698, 5276517) (291954, 5275043) (291861, 5273905) (292665, 5273465) (293262, 5271998) (293071, 5270061) (294239, 5268378) (295509, 5267378) (296804, 5265015) (297875, 5262534) (298201, 5257310) (298100, 5256625) (298921, 5255277) (299400, 5254035) (299537, 5252787) (301306, 5255435) (303208, 5257063) (303528, 5258206) (302400, 5257730) (301508, 5256804) (299903, 5257455) (300216, 5258940) (299920, 5262572) (300583, 5263608) (299151, 5267220) (296826, 5275931) (294813, 5280214) (294077, 5283043) (293565, 5286103) (293435, 5293036) (291919, 5295055) (289728, 5296719).

(viii) Polygon bounded by the following coordinates: (326871, 5210120) (327424, 5209899) (327295, 5209641) (327488, 5209523) (328236, 5209476) (328997, 5209807) (329431, 5209438) (330142, 5209852) (330788, 5209174) (331487, 5209014) (331418, 5207714) (331705, 5207425) (332150, 5207259) (332509, 5208096) (332990, 5208145) (333602, 5207675) (333839, 5207184) (334566, 5207011) (334800, 5206680) (335436, 5206304) (335664, 5206282) (335773, 5206900) (336698, 5206851) (337026, 5206509) (337182, 5206057) (337652, 5205999) (339219, 5204579) (338270, 5202452) (338378, 5202256) (338777, 5202555) (339018, 5202445) (338860, 5201497) (338505, 5201615) (338404, 5201416) (338806, 5200500) (339318, 5200343) (339056, 5199944) (339093, 5199623) (339606, 5199216) (340049, 5198272) (339423, 5196824) (337813, 5196477) (337387, 5196235) (337028, 5195697) (337429, 5195494) (337987, 5195465) (340078, 5196167) (341546, 5195996) (342161,

5196156) (341894, 5195705) (340373, 5195393) (339781, 5195118) (339351, 5194748) (338074, 5192733) (336664, 5191832) (337701, 5191686) (338855, 5192481) (340309, 5192259) (340985, 5192328) (342117, 5193289) (342857, 5194286) (344480, 5195538) (345485, 5195151) (345197, 5194854) (345325, 5194417) (344883, 5193614) (343523, 5192265) (342396, 5191482) (342219, 5189728) (341160, 5189555) (341840, 5188464) (341997, 5187287) (343361, 5185678) (343434, 5183343) (343883, 5182132) (343578, 5181248) (343558, 5180535) (343768, 5179878) (344841, 5178317) (346229, 5177538) (343613, 5177563) (340338, 5175860) (338988, 5175747) (338002, 5175928) (336332, 5177086) (334682, 5177555) (335281, 5176288) (334989, 5175850) (333748, 5175542) (332764, 5174920) (331752, 5174630) (330840, 5173381) (327612, 5172007) (327162, 5172722) (324259, 5175167) (323118, 5175710) (322244, 5175774) (321621, 5176187) (321407, 5175875) (321146, 5176231) (320691, 5176117) (320517, 5175929) (320605, 5175613) (320225, 5175485) (320356, 5175211) (320080, 5174566) (319807, 5174611) (319554, 5175306) (318742, 5175661) (318140, 5175605) (317880, 5176202) (317714, 5175608) (316986, 5175467) (316795, 5175631) (316797, 5175388) (315957, 5175213) (315775, 5174818) (315053, 5174523) (314962, 5174716) (314753, 5174673) (313918, 5175213) (313025, 5174959) (312751, 5175139) (312740, 5175531) (312662, 5175365) (311909, 5175577) (311638, 5175404) (311465, 5175495) (310796, 5175333) (310924, 5176037) (310816, 5175684) (310294, 5175491) (309967, 5175166) (309778, 5175425) (309392, 5175455) (309113, 5175883) (308884, 5175723) (308857, 5175949) (308568, 5175954) (308557, 5176499) (308348, 5176879) (307650, 5176641) (307902, 5177411) (307052, 5176774) (307130, 5177171) (306664, 5177557) (307003, 5178407) (306322, 5177602) (305458, 5177915) (305148, 5177736) (304944, 5178125) (304778, 5178125) (304753, 5178767) (304416, 5178272) (304062, 5179052) (303866, 5178751) (303684, 5178693) (303553, 5178829) (302694, 5178412) (302848, 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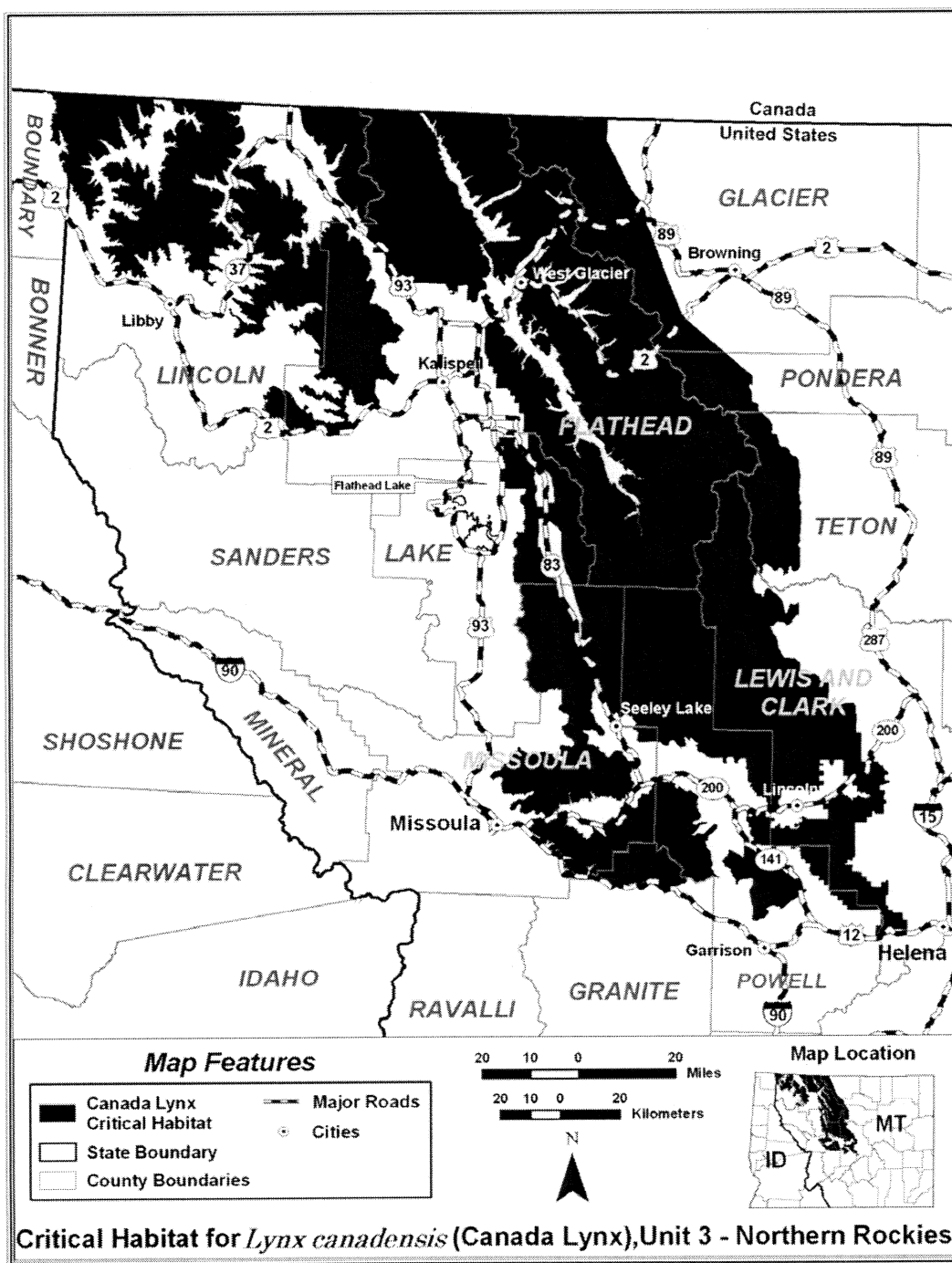
(ix) Polygon bounded by the following coordinates: (357993, 5186542) (358588, 5186497) (358871, 5186031) (360577, 5185555) (360879, 5185024) (361640, 5184800) (362405, 5184016) (363210, 5183674) (363621, 5183121) (364250, 5182825) (365117, 5181822) (366636, 5181373) (367466, 5179604) (367825, 5179177) (368586, 5178758) (369478, 5178811) (370031, 5178210) (371351, 5178001) (372069, 5177310) (372578, 5176486) (372957, 5176340) (373247,

5175934) (373328, 5174761) (373791, 5174547) (373779, 5173325) (374004, 5173224) (375044, 5173561) (375291, 5172786) (371111, 5170010) (370266, 5169667) (369025, 5168425) (368398, 5168168) (366531, 5166825) (366401, 5166867) (366143, 5167665) (365454, 5167556) (365199, 5167370) (364949, 5167797) (364426, 5168020) (363899, 5168036) (362118, 5167250) (361594, 5166882) (362607, 5166108) (362429, 5165422) (361785, 5164897) (361029, 5163916) (359727, 5163547) (358418, 5162900) (357403, 5163114) (356835, 5163523) (357138, 5164361) (357289, 5167116) (356686, 5168938) (356102, 5172573) (356206, 5173440) (357265,

5175133) (357357, 5176012) (357142, 5176794) (356741, 5177146) (355315, 5176927) (354095, 5176935) (353213, 5176580) (352149, 5175335) (351829, 5175187) (351668, 5175470) (351597, 5176455) (349894, 5179318) (349596, 5180421) (347834, 5181333) (347090, 5182790) (347205, 5183258) (347813, 5184035) (348549, 5184582) (349154, 5185854) (349356, 5186755) (352291, 5185545) (353879, 5184126) (354386, 5186198) (354377, 5187871) (355288, 5188953) (355398, 5188632) (356922, 5187832) (357993, 5186542).

(x) Map of Unit 3, Northern Rocky Mountains, follows:

**BILLING CODE 4310-55-P**



(8) Unit 4: North Cascades; Chelan and Okanogan Counties, Washington.

(i) Coordinate Projection: UTM, NAD83, Zone 11, Meters. Coordinate Definition: (easting, northing).

(ii) Polygon bounded by the following coordinates: (239064, 5432329) (238496,

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(iii) Polygon bounded by the following coordinates: (298693, 5429619) (298783, 5429239) (299366, 5429079) (299127, 5428455) (298722, 5427998) (298993, 5426901) (298951, 5426659) (298631, 5426408) (298627, 5425843) (299386, 5425828) (299579, 5425569) (299627, 5424953) (299821, 5424801) (300581, 5424737) (300552, 5424337) (300905, 5424324) (301239, 5423934) (301352, 5421464) (300889, 5421487) (300912, 5422300) (300076, 5422341) (300071, 5421934) (299672, 5421955) (299665, 5421552) (299247, 5421569) (299259, 5421966) (298846, 5421968) (298854, 5422367) (299679, 5422356) (299787, 5424749) (298256, 5424783) (298452, 5431123) (298809, 5431111) (299124, 5430554) (298591, 5429919) (298693, 5429619).

(iv) Polygon bounded by the following coordinates: (294912, 5414454) (294614,

5414228) (294066, 5414639) (294105, 5414925) (294503, 5414901) (294912, 5414454).

(v) Polygon bounded by the following coordinates: (300905, 5410752) (300704, 5410477) (301063, 5410205) (301253, 5410196) (301422, 5410412) (301704, 5410304) (301936, 5410506) (301998, 5410266) (301599, 5410280) (301589, 5409883) (300793, 5409915) (300782, 5409507) (299160, 5409581) (299184, 5410362) (299588, 5410346) (299597, 5410764) (300006, 5410751) (300017, 5411298) (300695, 5411358) (300905, 5410752).

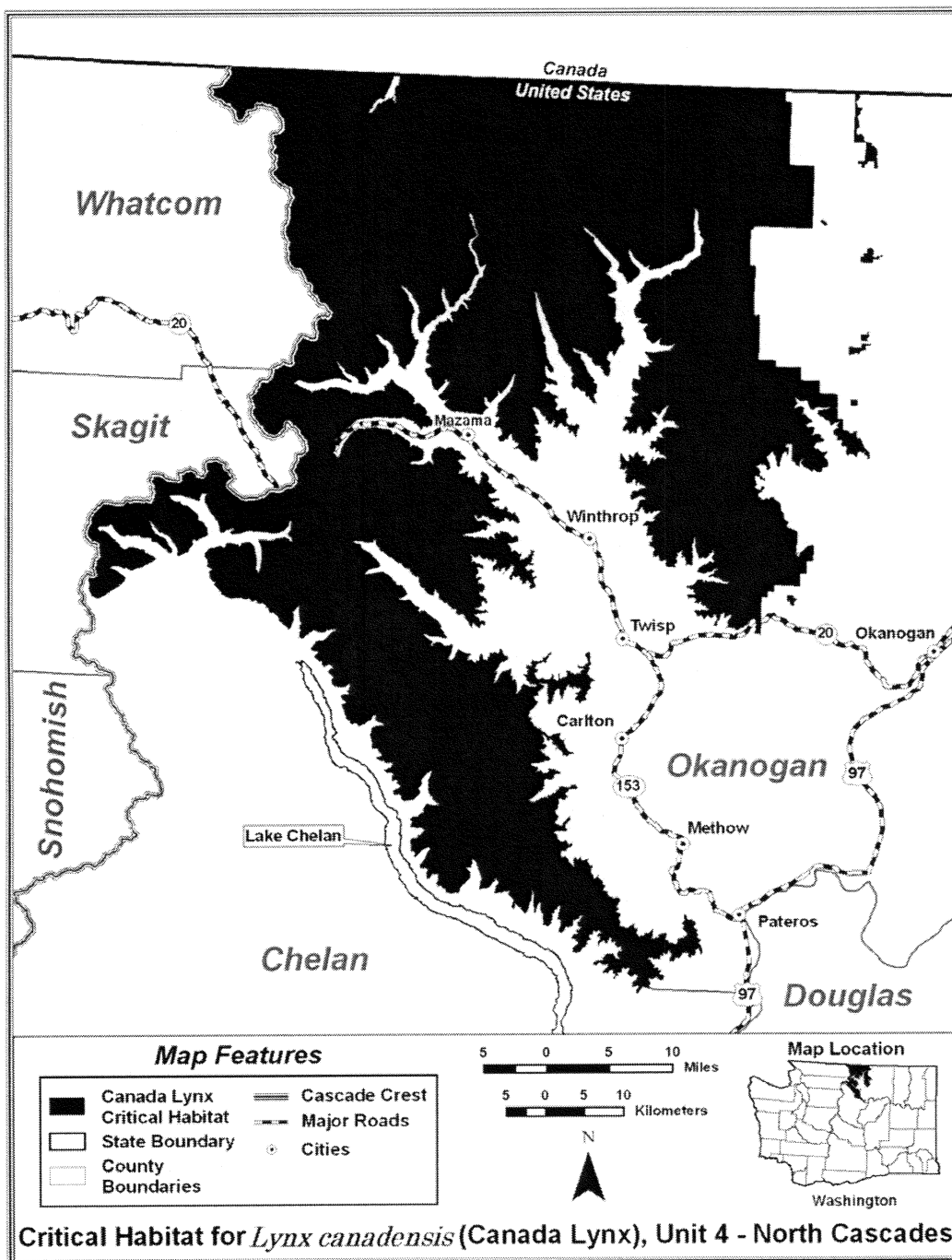
(vi) Polygon bounded by the following coordinates: (300219, 5400249) (300262, 5400081) (299974, 5399808) (300209, 5399451) (299250, 5399479) (299206, 5400251) (300075, 5400248) (300068, 5400640) (300462, 5400643) (300176, 5400403) (300219, 5400249).

(vii) Polygon bounded by the following coordinates: (300474, 5399028) (300384, 5398810) (299815, 5398831) (299892, 5398239) (299453, 5398251) (299447, 5398125) (299217, 5398224) (298927, 5397671) (298836, 5397890) (298445, 5397902) (298435, 5397644) (298204, 5397774) (297744, 5397618) (297668, 5398704) (299256, 5398659) (299267, 5399077) (300474, 5399028).

(viii) Polygon bounded by the following coordinates: (298728, 5391979) (298693, 5391159) (297893, 5391191) (297938, 5392018) (298728, 5391979) (290917, 5366509) (290903, 5366121) (290646, 5366286) (290715, 5365684) (290529, 5365525) (290092, 5365787) (290099, 5366123) (289706, 5366139) (289733, 5366950) (290530, 5366926) (290516, 5366521) (290917, 5366509).

(ix) Map of Unit 4, North Cascades, follows:

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(9) *Unit 5: Greater Yellowstone Area; Gallatin, Park, Sweetgrass, Stillwater, and Carbon Counties in Montana; Park, Teton, Fremont, Sublette, and Lincoln Counties, Wyoming.*

(i) Coordinate Projection: UTM, NAD83, Zone 12, Meters; Coordinate Definition: (easting, northing).

(ii) Polygon bounded by the following coordinates: (595623, 4836739) (595482, 4836735) (595623, 4836739) (595623, 4836739) (597176, 4842498) (595646, 4842468) (597176, 4842499) (597176, 4842498) (583329, 5057658) (583373, 5054409) (587627, 5054464) (587632, 5054204) (587885, 5054060) (587993, 5053401) (587826, 5052890) (587374, 5052447) (586926, 5052346) (586782, 5052069) (587378, 5051132) (587135, 5050819) (587508, 5049923) (587422, 5049625) (587582, 5049307) (587373, 5048884) (587413, 5047799) (586922, 5047377) (587042, 5047203) (586806, 5046744) (586885, 5046449) (586570, 5046127) (586287, 5045465) (585919, 5044467) (585979, 5044255) (587400, 5044468) (587686, 5045021) (588022, 5045044) (589008, 5045679) (589054, 5045989) (589262, 5046117) (589583, 5045981) (590048, 5046310) (590883, 5045676) (591872, 5045844) (592189, 5046408) (592891, 5046612) (593065, 5035475) (586635, 5035373) (586569, 5038605) (584962, 5038577) (585021, 5035364) (583422, 5035362) (583481, 5030527) (588290, 5030569) (588308, 5028959) (599577, 5029108) (599600, 5027498) (601216, 5027537) (601244, 5025910) (602859, 5025934) (602913, 5022698) (604471, 5022728) (604478, 5022301) (604883, 5022312) (604887, 5021912) (604484, 5021907) (604499, 5021101) (604119, 5021091) (604147, 5019885) (605742, 5019917) (605800, 5017917) (606588, 5017930) (606606, 5016313) (612249, 5016408) (612277, 5014799) (612634, 5014806) (612646, 5013576) (612300, 5013570) (612316, 5012351) (621949, 5012575) (622079, 5009427) (628461, 5009570) (628540, 5007933) (630160, 5007951) (630187, 5007140) (630592, 5007148) (630606, 5006742) (632994, 5006792) (633008, 5006385) (633398, 5006401) (633445, 5003111) (633825, 4997494) (638679, 4997525) (639089, 4985303) (614021, 4984515) (614829, 4984027) (615139, 4983462) (617102, 4982466) (618016, 4981119) (618618, 4981492) (618389, 4981204) (618504, 4980897) (618408, 4980206) (618220, 4979681) (617711, 4979026) (617770, 4978623) (617192, 4977715) (617199, 4977153) (616439, 4977220) (616029, 4977423) (615269, 4976300) (614061, 4976047) (613265, 4975194) (612776, 4975204) (612345, 4974596) (611855, 4974636) (610854, 4973696) (610832, 4973075) (611040, 4972888) (611286, 4972088) (611062, 4971673) (611052, 4970293) (610471,

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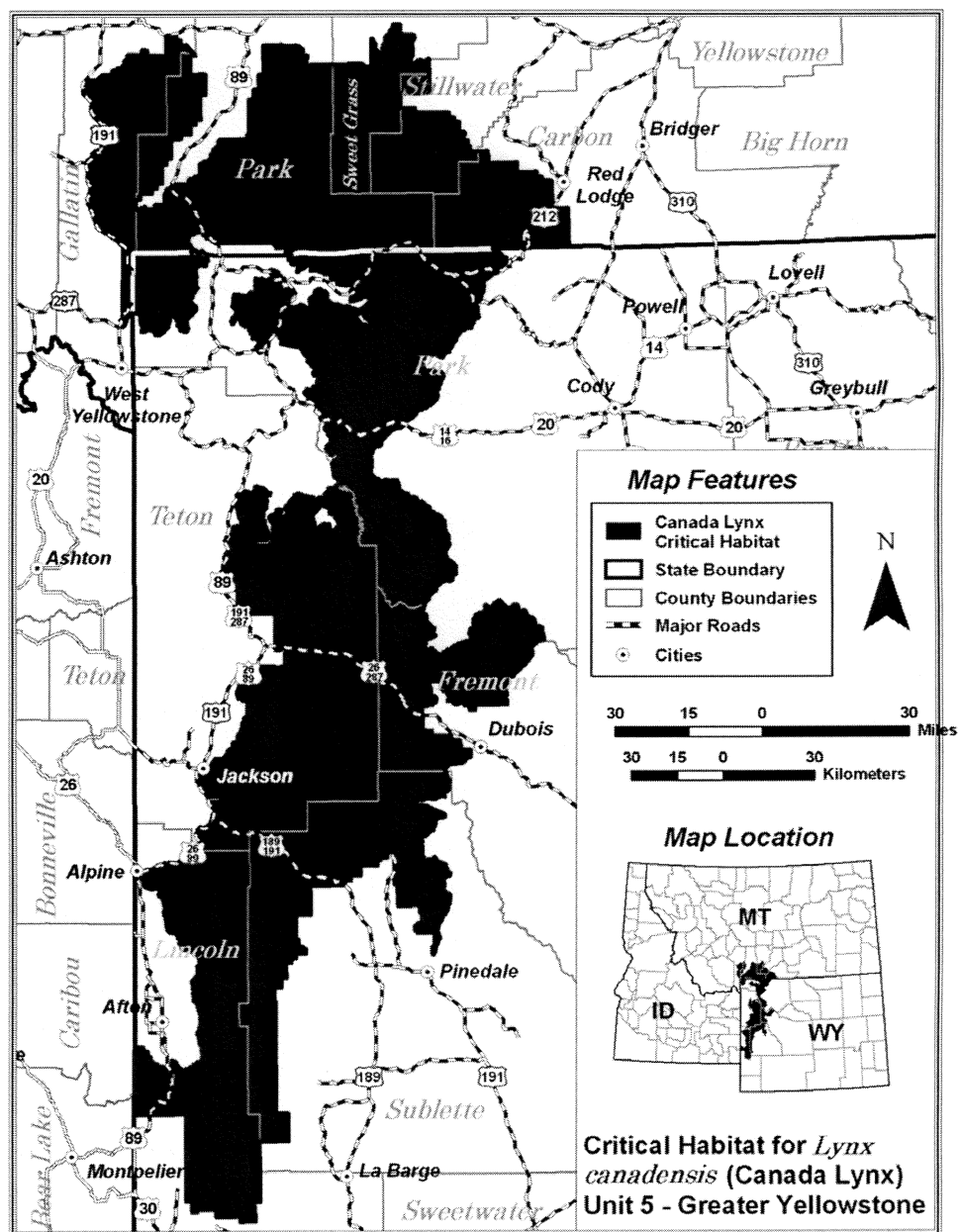
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Dated: February 12, 2009.

**Jane Lyder,**

Assistant Deputy Secretary, Department of the Interior.

[FR Doc. E9-3512 Filed 2-24-09; 8:45 am]

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